



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 797 OF 2022

Abuzar Ayyaz Tamboli
Age -18 years, Occ: Fitter,
R/at – Plot No. 39,
Opp. of Saibaba Temple, Parvati Darshan, Pune ...Appellant

Versus

1) The State of Maharashtra
through Taddwadi Police Station, Pune

2) XYZ
age: 18 Years,
R/at – 896, Kasaba Peth
Near Ram Rahim Mitra Mandal, Pune ...Respondents

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Ms. Anjali Patil a/w Tohid Shaikh for the Appellant.
Mr. A.S. Gawai, APP for Respondent No.1.
Mr. Rahul Gupta a/w Saumya Goyal for Respondent No.2.
WPSI Shital Chitte, Parvati Police Station present.

CORAM : R.M. JOSHI, J.
RESERVED ON : 18th FEBRUARY, 2026
PRONOUNCED ON : 25th FEBRUARY, 2026

:JUDGMENT :

1. This appeal filed by the convict takes exception to Judgment and Order dated 30.06.2022 passed in Special Case No. 80 of 2021 whereby the accused came to be convicted for the offences punishable under Section 326-A and 354-D, 506 of IPC and Sections 10 and 12 of Protection of Children from Sexual Offence Act, 2012 ('**POCSO Act**' for short) and was sentenced to suffer maximum imprisonment for a period of 10 years with fine and with default sentence.

2. On 23.11.2020, informant-victim while admitted in hospital made statement to the police which was recorded as first information report, wherein she claimed that she had friendship with accused prior to her marriage. After her marriage, accused was harassing her. On that day at about 08.00 a.m. victim went to meet accused by wearing a burka. They met near public toilet at Bhamre School, Parvati Darshan, Pune. At that time, their common friend Sohail was also present but was sitting in an auto rickshaw at about some distance. The victim claims that she was giving understanding to the accused that now she is a married woman and that he should not follow her. At that time, accused threatened her and threw some liquid on her face. As a result of the same, she got burning injuries to the left side of her face. She raised cries for help. The people who gathered at the spot took her to her parents place. On the basis of said information, crime came to be registered vide No.2639 of 2020 with Dattavadi Police Station, Pune.

3. The investigation into the said crime was conducted. The statement of the victim was recorded under Section 164 of Cr.PC. So also her medical certificates were included in the investigation papers. The spot panchanama was drawn. Seized muddemal was sent for chemical analysis and on receipt of the report, it was placed before the Trial Court. Accused came to be arrested. On completion of investigation, chargesheet was filed before the competent Court.

4. Charge was framed against the accused. Since he denied the charges, he was tried. The prosecution examined 13 witnesses i.e. PW-1 Sou. Roma Chandan Kamble, PW-2 Chandan Dnyandev Kamble, PW-3 Sohail Javed Shaikh, PW-4 Ayub Ibrahim Khan, PW-5 Satish Waman Jagtap, PW-6 Chetan Suresh Kadam, PW-7 Arpit Santosh Doshi, PW-8 Victim girl, PW-9 Dr. Navin V, PW-10 Jintendra Mansing Jawale, PW-11

Suryakant Hariba Saptale, PW-12 Vijay Shrawan Aware, PW-13 Ravindra Janardhan Kaspate,

5. Apart from oral evidence, prosecution plays reliance on documentary evidence such as, CA Report (Exh. 19 and 20), Birth certificate of victim (Exh.45), Statement of victim recorded under Section 164 of Cr.P.C. (Exh. 46), Injury certificate along with medical papers of victim (Exh.49), Seizure panchanama of clothes of victim (Exh.61), Seizure panchanama of clothes of accused (Exh.64), letter issued to cyber expert for obtaining the hash value of the pen drive (Exh.69) etc. The Trial Court found the evidence of prosecution sufficient to bring home guilt of the accused and hence recorded conviction against him by impugned judgment and order.

6. Learned counsel for the Appellant submits that here in this case the prosecution witnesses including victim have turned hostile and therefore, there is absolutely no evidence in order to convict the Appellant for the alleged crime. It is submitted that the father of the victim so also the other independent witnesses have not supported the story of the prosecution with regard to accused throwing any substance/acid on the face of the victim. To support this submissions, reference is made to the evidence of PW-1, PW-2, PW-3 and PW4. It is further argued that even if the victim in the cross-examination conducted by the learned APP has stated about accused throwing some substance on her face, there is no denial sought from the victim with regard to the said evidence in the cross-examination conducted by the prosecution. It is thus argued that there are two different versions of the occurrence of the incident on the basis of evidence of the victim i.e. firstly she states about someone else having thrown a substance on her face while she was talking to the accused and the other version is about

accused throwing the said substance on her face. It is submitted that in view of the settled position of law that if the evidence indicates two possibilities, the one in favour of the accused needs to be accepted. It is further argued that though prosecution has examined Assistant Chemical Analyzer PW-10 to prove CA reports, however according to the counsel, the Investigating Agency has failed to conduct any investigation with regard to the procurement of the acid or substance, which was thrown on the victim. It is submitted that unless the said evidence is brought on record, there cannot be proof of the guilt of the accused and it cannot be held. That the prosecution has succeeded in proving the guilt of the accused beyond the shadow of reasonable doubt. On these among other submissions, she seeks acquittal of the accused/appellant. She placed reliance on following case law to support her submissions.

(i) Rajkumar Singh @ Raju @ Batya v/s. State of Rajashtan [ABC 2013 (II) 206 SC]

(ii) Shivaji Shankar Zagade v/s. State of Maharashtra [Cr. Appeal No. 721/2000]

(iii) Vimal Kumar Mourya v/s. State of U.P [2013 SCC OnLine All 6]

(iv) Chellammal And Anr v/s. State represented by the Inspector of Police [Cr. Appeal No. 2065 of 2025]

(v) Lakhanlal @ Lakhan Singh v/s State of M.P [ABC 2019 (II) 18 SC]

(vi) Kalamuddin Mohammad Isteyar Ansari v/s. State of Maharashtra [Cr. Appeal No. 315 of 2023]

7. Learned APP and Learned Counsel for Respondent No. 2

supported impugned judgment and order. They drew attention of the Court to the cross-examination of victim conducted by APP as well as defence Counsel. It is their contention that on the basis of admitted facts, it cannot be said that someone else than the accused has thrown the substance on the face of the victim. They drew attention of the Court to the evidence of Investigating Officer and PW-10, the Assistant Chemical Analyser. To submit that there is sufficient evidence to hold that the substance which was thrown on the victim's face was acid. It is submitted that if the accused is not the person who has thrown the said substance, question arises as to how the nitrate ions were detected on the clothes of the accused. It is their submission that accused provides no explanation for the same. According to them, the prosecution has succeeded in proving the serious nature of crime being committed by the accused against the victim.

8. At the outset, it needs to be recorded that there is substance in the contention of Counsel for the Appellant that the witnesses examined by the prosecution i.e. father of the victim PW-4, independent witnesses. PW-2 and PW-3 so also have not supported the case of the prosecution and were declared hostile. Similar is the case with the victim. Since, she did not support the case of the prosecution during her examination-in-chief, with the permission of the Court, she was declared hostile and was cross examined. The law on the point of the appreciation of evidence of hostile witness is settled to say that the entire testimony of such witness cannot be and need not be discarded. The evidence even of a hostile witness to the extent it is reliable and relevant for the decision of the case would be considered by the Court. Keeping in mind, the said position of law, evidence laid by the prosecution is evaluated.

9. PW-4 Ayub is father of the victim who deposes about the

occurrence of the incident in which acid was thrown on victim and she having sustained burn injuries. He, however states about the acid being thrown by someone. Similarly PW-1 Roma who was present nearby the spot also confirms the fact that she was told by the victim that something has been thrown on her face and she sustained burns because of the same. Pw-2 Chandan also states about he alongwith nearby people having taken the victim to her father's house. The victim in her evidence in examination-in-chief states about some substance being thrown by someone upon her face while she was talking to the accused. Though she states about somebody has thrown the liquid on her face, as noted herein above she was declared hostile and permission was granted by the Court to cross-examine victim. In the cross examination, she candidly states about her relationship with the accused prior to her marriage. She also describes the acts of the accused after she was married. She states that she went to the spot in order to give understanding to the accused for not indulging into such acts. She specifically states as recorded in paragraph 7 of her evidence that when she tried to give understanding to the accused that he should not follow her as she is now married, accused told her "तुझे आपने आपपर गुरुर है ना, देख मैं अभी तेरा गुरुर तोड देता हूँ". Thereafter, accused threw some liquid on her face which he was carrying in his hand. The said liquid went inside her burka and started burning her face. She specifically states about she seeking help of the local people who took her to her father's place. In the cross-examination conducted by the defence, most of the aspects with regard to the previous relationship between the accused and victim, so also accused meeting victim at the spot of the incident, are not in dispute. A suggestion made to the victim with regard to accused having not thrown any substance on her face has been denied by the victim. It is thus clear that victim remains firm upon her statement

made during cross conducted by APP.

10. The aforestated evidence therefore clearly indicates that on 23.11.2020 victim went to meet accused at the spot of the incident. At that place, accused threw some substance on her face which caused burn injuries to her. She asked for help from the others and she was taken to her father's place and thereafter. was admitted in hospital. During the cross-examination, it was sought to be suggested to the victim that her husband was not liking her friendship with the accused and therefore, in order to teach lesson to her, he threw some chemical liquid on her face. The said suggestion no doubt is denied by the victim. However, the said suggestion goes completely contrary to the facts appearing on record. At the first place, even the hostile witnesses have stated about the occurrence of the incident in which some liquid was thrown on the face of the victim and that she sustained burn injuries. There is consistent evidence of PW-1 Roma and PW-4 Ayub in this regard. There is further support to their testimony with regard to the occurrence of the incident at the spot by evidence of victim herself. Most importantly, the clothes of the accused which were seized during the course of the investigation, also detected with nitrate ions. Now question arises, as to whether it is possible that the nitrate ion which was the particles of the chemical used in the crime could be found on the clothes of the accused, if the incident of throwing the same has occurred at some other place than the spot. Admittedly, the accused was present at the spot. The evidence laid by the prosecution uncertainly indicates that the substance which was thrown on the victim was a chemical substance and in fact in the cross examination of PW-10, it has come on record that the said substance is acid. Thus, the prosecution was able to prove that the substance which was thrown on the face of

the victim was acid and the residues thereof, that is nitrate ions were detected on the clothes of the accused.

11. This evidence rules out the possibility of the occurrence of the incident at some other place or the husband of the victim having thrown any chemical liquid on her face. So also, the said evidence confirms the fact that the accused was present at the spot and while throwing the said substance on the person of the victim, his clothes were also smeared with the said substance. Now in these circumstances, the burden is upon the accused to explain as to the reason for which residues of nitrate ions were found on his clothes. The perusal of statement of the accused under Section 313 of Cr.PC. or even cross-examination conducted of the witnesses do not indicate any explanation being shown by the accused in this regard.

12. Once the accused does not dispute the fact of his presence at the spot, prosecution is not required to lead any other evidence to prove the same. Now the said fact coupled with evidence of the victim which gets due support from the CA report conclusively shows that it was the accused, who has thrown the acid on the face of the victim. The accused also had motive for doing the said act as it appears from the cross-examination conducted on behalf of the defence. The questions put to the victim in the cross-examination indicate that there was an affair between victim and the accused and that their marriage was opposed by the father of the victim. After victim got married with someone else, accused had grievance against her and there was a motive for committing the offence in question. It is pertinent to note that the victim categorically states the utterances of the accused as recorded herein above which indicate that he had prepared himself and after preparation, in order to deface the victim, acidic substance was thrown

on her face.

13. Learned counsel for the Appellant sought to argue that there is no evidence laid by the prosecution in order to show as to how the chemical substance was procured by the accused and therefore according to her, there is no complete evidence in order to record conviction against him. The evidence on record is of overwhelming nature which unerringly shows that the accused is the one who had thrown the acidic substance on the face of the victim which caused burn injuries to her. In such circumstances, even if the prosecution has not brought on record any evidence to indicate the procurement of the chemical substance by the accused, the same does not go to the benefit of the defence.

14. Learned counsel for the Appellant has submitted that there is no offence committed by the accused which would attract provisions of POCSO Act. This contention was opposed by learned APP and learned counsel for Respondent No. 2 by submitting that the act of throwing acid on the face of a minor is an offence under POCSO Act.

15. In order to bring any act done by the accused as an offence under the POCSO Act, the offence /the act alleged must be act of sexual assault as defined by Section 3 of the Act. Admittedly, here in this case there is no allegation that it was a sexual assault committed by the accused on the victim. In absence of sexual intent in commission of act, the question of invoking provisions of POCSO Act in the present case does not arise. Consequently, the conviction recorded by the Trial Court under the provisions of POCSO Act deserves to be set aside. However, the prosecution has proved the offence punishable under Section 326A of IPC against the accused and the order of conviction recorded against him deserves confirmation.

16. At this stage, learned counsel for the Appellant submits that at the time of occurrence of the incident accused was hardly aged 18 years with no criminal history behind him. It is her submission that the accused therefore, be shown leniency.

17. Having regard to the nature of offence proved punishable under Section 326A and since it carries minimum sentence of 10 years. Thus, the Trial Court has sentenced the accused for a period of 10 years. It would not be therefore open for this Court to reduce the sentence below minimum prescribed by the Statute.

18. Apart from this, with regard to the nature of offence of throwing of acid on the face of a minor girl, this Court finds that the provisions of Probation of Offenders Act also cannot be extended to the Appellant.

19. As a result of above discussion, Appeal stands dismissed.

(R.M. JOSHI, J.)