

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1174 of 2022

Sanjay Hardas Bhagchandani,

Age : 44 years,

Occupation : Coaching,

Residing at : Flat No.603, Prajapati Park,

Plot No.14/5, Sector 11, Koparkhairne,

Navi Mumbai.

Currently Lodged in Nashik Central Jail.

... Appellant/s

versus

1. The State of Maharashtra

(Through Koparkhairne Police Station,

Navi Mumbai.)

Respondent/s

2. XYZ

....

Mr. Siddh Vidya along with Ms. Shalaka Karkar, Ms. Divya Maniar, Ms. Mansi Sahani and Ms. Sandhya Tiwari i/b. Siddh Vidya & Associates, Advocates for the Appellant.

Mr. Mayur S. Sonavane, APP for Respondent No.1-State.

Mr. Ganesh Shelar, Advocate Appointed for Respondent No.2.

CORAM : R. M. JOSHI, J.

RESERVED ON : 15th DECEMBER, 2025.

PRONOUNCED ON : 19th DECEMBER, 2025.

Judgment:

1. By the judgment and order dated 14th September 2022 passed in Special (POCSO) Case No.562 of 2020, the appellant is convicted for the offences punishable under Sections 376(2)(f)(n) and 506 of the Indian Penal Code, 1860 (for short "the IPC") and Section 6 of the Protection of Children Against Sexual Offences, 2012 (for short "the POCSO Act") and

sentenced to suffer rigorous imprisonment for 20 years and 2 years with fine of Rs.25,000/- and 5000/- respectively. Being aggrieved by the said judgment, the present appeal.

2. It is the case of the prosecution that on 7th October 2020, the victim at the time of lodging of the report was about 18 years of age, she claimed that in April 2019, she took admission in a tutorial at Vashi for 12th Standard Account subject. The accused used to teach accounts. She claims herself to be a bright student and stood first in the class. This fact was appreciated by the accused and the accused used to throw ice-cream party as and when she received first rank in the examination. It is further claimed by the victim that in October 2019, accused told her that he has prepared special notes of accounts subject, which are meant only for her and that he would give the same to her at his house at Koparkhairne. When the victim told accused that she is required to attend mathematics classes at 6.00 p.m, he told her that he would drop her at the said place. She, therefore, went along with the accused in his vehicle to his house. He took her to Room No.603 on the 6th Floor of the said building. The victim claims that he caught hold of her hand and hugged her. She shouted and resisted to the advances made by the accused. He further forcibly established sexual/physical relations with her and told her not to disclose the incident to anyone. He also told her that he would give good education to her. Thereafter, she was dropped by the accused to her mathematics class. She did not inform about the said incident to anyone

out of fear of defamation. In February 2020, she went to the tutorials to attend the test of Accounts' subject. The accused then asked her to accompany him to his residence and told her that he has made a video which he would like to show her. On her refusal, he threatened to make the video viral. She then went to the house of the accused in his car. The accused established forcible physical relations with her and told her that he would make the video viral, if she talks about the incident to anyone. According to the victim, after February 2020, her classes came to an end and, therefore, she stopped going to the class. In June 2020, the accused called her and asked her to message him and call him, otherwise if she does not do as told, the accused threatened her that he will make the video viral. The accused started asking her to come to his house to meet him. Due to such threats, she was under immense pressure. Since the harassment of the accused intensified, on 6th October 2020, she confided with her mother about the incident, who in turn, told the same to the father of the victim. As the parents gave courage to her, she lodged report against the accused. The crime was registered by C.R. No.221 of 2020 with Koparkhairne Police Station. The investigation was carried out in the said crime. The victim was sent for medical examination. Her statement was recorded under Sections 161 and 164 of the Cr.P.C.. The statements of the witnesses were recorded, panchanamas were drawn of the spot as well as seizure of incriminating articles. On conclusion of investigation, charge-sheet came to be filed before the competent Court.

3. The charge was framed against the accused vide Exhibit-15. He abjured the charge. The prosecution examined five witnesses to prove the guilt of the accused which included victim PW1 (Exhibit-26), her father-PW2 (Exhibit-37), Medical Officer – Dr.Anuja Bhobe (Exhibit-44), student of class (Exhibit-44) and Investigating Officer-PI-SutarPW5(Exhibit-51). Apart from the oral evidence, the prosecution has also relied upon the documentary evidence which is specifically set out in paragraph 11 of the impugned judgment. The defense examined wife of the accused at Exhibit- 73 after denying the incriminating circumstances put to the accused in statement under Section 313 of Cr.P.C..

4. The Trial Court found evidence led by the prosecution sufficient to bring home guilt of the accused beyond reasonable doubt and hence recorded conviction against him as stated hereinabove.

5. Learned counsel for the appellant/accused submits that there is an inordinate delay in lodging FIR and the same has not been explained satisfactorily. It is her contention that any unexplained delay would make the Court to consider the allegations against the accused and scrutinize the same with more rigor. It is her submission that there is nothing placed on the record to show as to what prompted the informant to lodge report against the accused in October 2020. It is her submission that from the evidence on record, it can be seen that the parents of the victim went through her mobile phone and found her conversation with the accused and which led them to call upon the informant/victim to lodge report

against him. It is submitted that the prosecution has placed reliance on the testimony of victim as well as so called extrajudicial confession recorded by the accused for proof of guilt. It is argued that evidence of victim does not inspire confidence as she fails to satisfactorily explain the delay in the lodging report so also her contention is unsupported by the medical evidence. According to her, law on the point of the appreciation of evidence of a victim of sexual assault is clear to say that in case the testimony of the victim is free from doubt and inspires confidence, the same can become the basis for conviction of the accused without insisting for corroboration. It is her submission that in the facts of the case and also having regard to the evidence led before the Trial Court, the victim cannot be termed as a sterling witness in order to accept her statement as gospel truth without seeking any corroboration thereto. It is submitted that though the medical evidence indicates about hymen being ruptured, the medical officer has categorically admitted that she will not be in a position to state about rupturing of the hymen on account of the sexual intercourse unless it is supported by FSL Report. It is argued that FSL Report is not placed before the Trial Court and as such, it cannot be held that the fact of the rupture of hymen can be connected with the alleged intercourse committed by the accused with victim.

6. It is further argued that the statement of the victim with regard to she being threatened of defamation by publication of video by the accused is unsustainable for the reason that the father of the victim has

gone through the laptop as well as mobile phone of the accused when he along with his wife visited the residence of the accused and that nothing could be found from the said gadgets. It is submitted that there is no evidence to show that any video was prepared by the accused. It is thus argued that the evidence of the prosecution falls short of bringing home the guilt of the accused beyond reasonable doubt. To support her submissions, she placed reliance on following judgments:

1. State (GNCT of Delhi) versus Vipin @ Lalla in Criminal Appeal No.94 of 2025 dated 7th January 2025;;
 2. Santosh Prasad @ Santosh Kumar versus The State of Bihar (2020) 2 SCR 798;
 3. Rai Sandeep @ Deepu versus State of NCT of Delhi in Criminal Appeal No.2486 of 2009 with Hari Singh versus State (NCT) of Delhi in Criminal Appeal No.2487 of 2009 dated 7th August 2012.
7. Learned APP and learned counsel for respondent No. 2 supported the impugned judgment of the conviction. Learned counsel for respondent No. 2 /victim submits that the victim was admittedly minor at the relevant time and hence the provisions of the POCSO Act are rightly invoked against the accused. It is his further submission that the victim has stuck to her earlier statements in her substantive evidence before the Trial Court. It is submitted that a threat to a young girl of making her videos viral was sufficient to pressurize her to succumb to the demands of

the accused so also not to disclose the incident to anyone. It is submitted that merely on the count of delay in lodging of the report, she cannot be disbelieved. It is further argued that the act of the father of going to the house of accused is a natural conduct and that any person would definitely go to the perpetrator of the crime to question him about the acts done by him with his daughter. It is submitted that the accused not only sent message accepting his guilt but has also recorded a voice message indicating that he committed sexual intercourse with his students. It is argued on behalf of the learned prosecutor that in statement under Section 313 of the Cr.P.C, the accused has accepted love relations so also the defense witness i.e. the wife of the accused has also accepted that at the time of occurrence of the incidents, the victim was aged about 13 years. It is his submission that the evidence of the victim is duly corroborated by the medical evidence which indicates that the possibility of the sexual assault is not ruled out. According to him, the accused has failed to rebut the presumption as contemplated by Section 29 of the POCSO Act.

8. There cannot be any dispute with regard to the proposition of law sought to be canvassed on behalf of learned APP and learned counsel for respondent No.2 that in case of the offences of sexual assault, the reliable testimony of victim can become the basis of conviction of the accused without seeking any further corroboration thereto. In this regard, it would be fruitful to make reference to the judgment of the Honorable

Supreme Court in case of **Nirmal Premkumar and Anr. Versus State**
Rep. By Inspector of Police in Criminal Appeal No. 1098 of 2024
dated 11th March 2024; wherein it is held that :

11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

12. In *Ganesan v. State* (2020) 10 SCC 573, this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in **Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21**. The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined as under:

"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as

the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(underlining ours, for emphasis)

14. In **Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130**, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence

corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."

15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.

Keeping in mind, the aforesaid law laid down by the Honourable Supreme Court, the evidence of the present case deserves to be scrutinized.

9. At the outset, it needs to be recorded that the prosecution has proved that at the time of occurrence of the alleged incident, the victim was minor. The defense also has not taken exception to the said fact. It is, therefore, held that victim was a child as contemplated by Section 2(d) of the POCSO Act at the relevant time. The victim in her testimony before the Trial Court claims that she joined the concerned classes in the year 2019. It is her contention that the accused used to show special interest in her for the reason that whenever she got first rank in the examination, he

used to throw ice cream party. In this regard, in the cross-examination, she accepts that accused used to give ice cream party even in case other students get first rank in the test. It is thus clear that there is no substance in the contention that accused was giving special treatment to the victim. The victim claimed that accused assured her of giving special notes and on that count, he took her to her to his house. It has, however, come in evidence that the notes were already circulated to all the students and there was nothing like special notes which were circulated by the accused. If it was the case of the victim that special notes were given to her, it was necessary for the prosecution to bring the same on record. There is nothing on record to indicate so. In this regard, it would be relevant to take note of testimony of PW4 who is a student of same tutorial admits in her cross-examination that in the classes they were getting periodical notes from the tuition teachers and no notes were given separately and in case any additional notes were required to be given, the same were provided in the classroom itself. In view of the said fact, it was necessary for the prosecution to bring on record, the special notes given by accused to victim, which were not circulated to other students. There is, however, no evidence to indicate so. Thus, it cannot be said that there is any evidence on record to hold that the victim was given any special treatment by the accused.

10. In this backdrop, it is pertinent to note that the alleged incidents have occurred in February 2020, whereas the report came to be lodged in

October 2020. Thus there is a delay of around 8 months in lodging of the report. The delay in lodging of the report in all cases will not become fatal to the case of the prosecution and more particularly, in case of the offence of sexual assault against a minor girl. However, at the same time, the delay will be required to be explained by the prosecution. Only for the reason that the offenses are against the minor girl, the fact of delay cannot be ignored. It is, therefore, necessary to see as to what made the victim to lodge report in October 2020.

11. The victim claims that after the occurrence of the incident and after she completed her classes in February 2020, in June 2020, the accused started to blackmail her by sending messages on phone and also by making phone calls. Because of this , she was under stress and, therefore, narrated the incident to her parents on 6th October 2020. In this regard, it is pertinent to note that there is no evidence collected during the investigation and placed before the Trial Court indicating that any messages were sent by the accused to the victim or calls made in June 2020 or at any time thereafter or before.. It was not impossible for the prosecution to bring the said evidence on record, however, the prosecution has failed to place the same before the Trial Court. Adverse Inference, therefore, needs to be drawn against the prosecution that the said evidence was not supporting the case of the prosecution and hence it was withheld from the Court.

12. This becomes relevant in the backdrop of the defence taken by

the accused. DW1 i.e. wife of the accused states about the victim having feelings towards the accused and the same was reflected from her messages. It is claimed by her that since the said fact became known to the parents of the victim, they came to the house of the accused confronting him with the same. This witness claims that the father of the victim went through the mobile phone as well as the laptop of the accused and found nothing incriminating therein. It is her statement that the father of the accused sent messages on various groups indicating that the accused has confessed of having sexual relations with his students. Since no one believed the said message, he pressurized the accused to record a voice message and in order to avoid any action, at the instance of this witness, he recorded the voice message. It would be relevant to consider evidence of PW4, who is student of same tutorial. She candidly states that inspite of the said message, she did not believe truth in it. Thus, there is support to the evidence of defense witness about accused being told to record voice message, since no one believed the text message.

12. There is further evidence on record in the form of admissions given by the victim in her cross-examination stating that she shared number of details of her family including the details about the ill health of her father to the accused. She also admits to have given a greeting card to the accused. She however claims that it was forcibly given at the instance of the accused. In case there was threat given by the accused to the victim, there was no reason for the victim to share the information

and photographs etc about their foreign trip, so also the details about hospitalization of her father during Covid 19 pandemic. After giving this admission, she claimed that since the accused was threatening her, the information was provided to him. This does not stand to the scrutiny of the conduct of any prudent person.

13. Suffice it to say that there is no satisfactory explanation provided by the prosecution/victim for lodging report belatedly after eight months of the incident.

14. The testimony of the victim, therefore, does not inspire confidence and that she cannot be termed as a sterling witness in order to accept her version to convict the accused without seeking any corroboration. It is sought to be contended on behalf of the prosecution that there is evidence in the form of medical report indicating that the hymen of the victim was ruptured and the findings are consistent with the sexual intercourse of the victim. In this regard however, the cross-examination of the Medical Officer PW3 Dr. Bhobe assumes importance. She admits that unless and until FSL report is produced, it cannot be said that the sexual intercourse was the only cause of irregular margins of the edges of hymen. She also accepts that irregular margins can occur due to masturbation. Admittedly, there is no FSL report on record which will support the opinion of the Medical Officer. Thus the evidence led by the prosecution in the form of medical evidence is not conclusive in nature and, therefore, not sufficient to corroborate version of victim.

15. The burden would always be on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution lays much stress upon the fact that the accused admitted the guilt and alleged extrajudicial confession of accused is sought to be relied upon. There is no dispute about the fact that the said alleged confession i.e. a text message and voice message was purportedly given by the accused in the presence of the father of the victim. The circumstances in which the said messages are made viral, do not inspire confidence of the court to hold that it is a voluntary admission of guilt by the accused. It becomes more unacceptable in the fact that he is said to have sent the said message on the group of the school of his son. It is practically impossible that a father would send such message on the group of the school of his son. Thus there is reason to believe that the said message would have been sent by the father of the victim from the mobile phone of the accused. There is no dispute made by the father of the victim about he having the mobile phone as well as laptop of the accused at his house. The burden on accused is only to create doubt about the case of prosecution and unlike prosecution, he is not required to prove his case for rebuttal of presumption beyond doubt. The evidence of extrajudicial confession is otherwise also a weak piece of evidence and in the facts of the case, it would be totally unsafe to rely upon the same in order to convict the accused.

16. The burden is always to be upon the prosecution to prove the

guilt of the accused beyond reasonable doubt even in case of offences under POCSO Act. Here in this case as discussed above, the evidence of the victim does not inspire confidence in view of the fact that there is delay in lodging of the report with no satisfactory explanation for the same. On the other hand, by way of cross examination, so also by examining defense witnesses, the accused was able to rebut the presumption under Section 29 of the POCSO Act. Consequently, the judgment and order of conviction cannot sustain for want of proof of the guilt of the accused beyond doubt.

17. In view of above discussion, the following order :

ORDER

1. The appeal is allowed.
2. The judgment and order dated 14th September 2022 passed in Spl.(POCSO) Case No.562 of 2020 by the Additional Sessions Judge, Thane-6, is quashed and set-aside.
3. The appellant stands acquitted of all the charges.
4. The bail bonds of the appellant stands cancelled.
5. Fine, if any paid, be refunded to the appellant.
6. Record and proceedings be returned to the learned Trial Court.

The appeal stands disposed of.

(R. M. JOSHI, J.)