IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 42 OF 2026

Ganesh Hotlappa @ Prabhakar Padampalle,
Age : 20 years, Occupation Education,
R/o. Aloor, Taluka Degloor,
District Nanded. … Appellant

Versus

1. The State of Maharashtra

2. X. Y. Z. … Respondents

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Mr. Nilesh S. Ghanekar, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for Respondent No.1-State.
Ms. Manjusha Ware Jagtap, Advocate for Respondent No.2-Victim (appointed through Legal Aid).

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 08.10.2026
Pronounced on : 13.10.2026

JUDGMENT :

1. Convict for offence under Section 354 of IPC and Section 9(m) r/w 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), challenges the judgment and order dated 17.12.2025 passed by learned Additional Sessions Judge (Special Court), Biloli in Special (POCSO) Case No. 31 of 2024.

2. Above trial was conducted on accusation of prosecution that victim, a girl of three and half years age, was taken by accused to a cattle shed and after removing her undergarment, his own undergarment, he inflicted sexual assault on her. The girl reported the incident to her mother and grandfather. Report of the above incident was made to the police, who registered crime, investigated it, chargesheeted accused for offence under Section 376-AB and Section 4(2) of the POCSO Act and he was made to face trial and ultimately came to be convicted for offence under Section 354 of IPC and Section 9(m) r/w 10 of the POCSO Act. Hence, instant appeal.

SUBMISSIONS

3. Questioning the above conviction, learned counsel for the appellant would point out that the alleged occurrence is of 13.06.2024 but there is no prompt reporting and rather is after two days i.e. on 15.06.2024. According to him, delayed reporting creates possibility of false implication. He would submit that, there is no convincing, cogent and reliable evidence in support of the charge. He pointed out that, FIR is on the statement of mother, but it is hearsay information. He would submit that, going by the contents of FIR and the deposition of victim, it is clear that mother has improvised her version by deposing what is not narrated in the FIR. According to him,

victim has not deposed about any act of accused which is alleged by mother. Further, there was every possibility of child being tutored. He pointed out that, even victim and mother are not corroborating each other. Learned counsel submitted that, according to victim, she reported the incident to grandfather and not to her mother, but FIR is at the instance of mother and it being hearsay, and when victim herself is silent about informing mother, even the FIR is rendered doubtful.

4. Learned counsel submitted that, even if accusations of prosecution are taken as it is, it is a case of mere attempt to commit sexual assault as no offence is complete and mere allegations are of removing undergarment. He pointed out that, there is no evidence of any actual sexual assault being inflicted. Even there is no touching to the person of victim. He would further submit that, medical evidence also does not support informant's accusations. Resultantly, case would not travel beyond 'attempt to commit sexual assault' (Section 7).

5. He submitted that, here, even otherwise mere 'attempt to commit sexual assault' (Section 7) at the most would be proved and in view of Section 18 of the POCSO Act, when half of the maximum sentence for main offence is to be counted, then punishment comes to

only two and half years as the longest term of imprisonment provided is five years under Section 7 punishable under Section 8 of the POCSO Act. He further submitted that, under Section 18 of the POCSO, there is no minimum punishment prescribed and therefore this Court has discretion to inflict any punishment even including fine or for already undergone sentence i.e. for two years and six months.

6. Strongly opposing the above submissions and justifying the judgment and order of conviction, learned APP would submit that victim was barely three and half years of age. According to him, she has deposed in the best possible manner which her age permitted her to do. He took this Court through the victim's testimony and also through the statement of victim recorded under Section 164 of Cr.P.C. and according to him, offence is indeed made out from her testimony. He pointed out that, grandfather and mother both confirm presence of accused at the spot and moreover, he was in frightened condition. Therefore, his such conduct needs consideration apart from no possibility raised about false implication in the backdrop of any enmity. Lastly he submitted that, defence put up by accused has not been probabilized. He would urge to employ section 29 of the POCSO Act to draw presumption.

7. Learned counsel appointed to represent the victim also supports the judgment and order of conviction and prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

8. Brief account and sum and substance of the evidence before trial court is as under ;

9. **PW1** informant, mother of victim, in her evidence at Exhibit 15 deposed that, victim is her daughter, and she knew accused who is son of her cousin father-in-law. According to her, on 13.06.2024, her husband left for work, mother-in-law went to the field and she was at home with her two children and father-in-law. Victim daughter, who was playing outside the house, was not seen and therefore was searched. She claims to have given calls to her and at that time her victim daughter came out of their cattle shed weeping. Accused also came from the cattle shed after her and he was in frightened condition and he told her that victim was terrified by the cow and saying so, while he was leaving, he was caught hold by her father-in-law and was slapped. She claims to have asked her daughter, who told her about accused, saying that victim's father was in the cattle shed, took her there, made her sit on a cot and he removed his own

nicker as well as victim's nicker. She deposed that, her victim daughter pointed to her private part as well as the private part of baby son of this witness and informed that accused inserted that part in her private part. Therefore, this witness examined victim's private part and noticed redness. Victim complained of pain and therefore, she called her husband and then lodged report which she identified to be at Exhibit 16.

While under cross, she denied distance between temple and her house to be one kilometer. She volunteered that it is 200 meters apart. She denied the temple to be abutting their cattle shed. She admitted that people were present in the temple. She also admitted that she is unable to write Marathi language. She admitted the names of the neighbours suggested to her. She admitted that neither she nor anybody took the victim to hospital i.e. till filing complaint Exhibit 16. She admitted that on that day, accused had conducted *pooja* in the temple. She admitted that accused resided in Hyderabad. She denied that she was deposing at the instance of her sister-in-law.

10. **PW2** is the victim and this child in her evidence at Exhibit 19 testified that she knew accused who took her to the cattle shed by saying that her father was there. There he removed her nicker and his

own nicker. Then he allowed her to leave after which she came out of the cattle shed. That day, her mother was in the house and father was not available. After coming out of the cattle shed, her grandfather had come.

While under cross, which is in question-answer form, she answered that she came out of the cattle shed running. She denied her grandfather to be asleep. She was asked when she came home, whether her mother was having meals, to which she answered that mother was not in the house. To a question whether accused was in the temple, she answered in affirmative. Then she was asked whether accused removed her nicker and his own underwear, she answered that underwear was removed. She answered that accused had taken her to the cattle shed. To a question whether she was deposing as stated by her mother, she denied. She also confirmed that accused did meet her that day.

11. **PW3** has acted as pancha to spot panchanama as well as seizure of clothes of victim and accused.

12. **PW4** is grandfather and he deposed at Exhibit 41 that on 13.06.2024, after taking lunch, he was asleep at 12.00 noon while victim was playing outside. According to him, her mother, i.e. his

daughter-in-law, went out of the house giving calls to her daughter and so he woke up and he also claims to have followed her. Cattle shed was after two to three houses from their house. He claims to have seen his daughter-in-law and grand-daughter, who was weeping, outside the cattle shed and his daughter-in-law was asking victim as to what had happened. At that time, accused was seen standing there but he was in frightened condition. He claims that he asked accused to sit and asked him what happened. According to him, victim in his presence told his daughter-in-law that accused took her to the cattle shed saying that her father was there, and she also told that he removed her nicker as well as his own underwear. According to him, his grandson, who was small, was on the lap of his daughter-in-law. He deposed that, victim grand-daughter pointed to the penis of his grandson she said that, accused had pressed his that part on her private part and saying so, she was weeping. This witness further deposed that, victim also said that she was suffering pain to her private part, and at that time accused fled. His daughter in law telephoned his son who returned at 5.00 p.m.

While under cross, he admitted that his grand-daughter was not taken to the hospital due to pain to urinal part, nor she was taken on the next day. Then he is questioned about the distance between

temple and cattle shed and whether there was permission of Gram Panchayat to erect cattle shed. He denied that when he went towards cattle shed, that time neighbours had gathered. Rest is all denial.

13. **PW5** is the doctor who is examined at Exhibit 56 and he claims that on 16.06.2024 he and his colleague, a lady doctor, medically examined victim who was three years of age. According to him, during examination he noticed abrasion to her right forehead admeasuring 1 cm x 0.2 cm and its colour was reddish. According to him, on local examination of private part, hymen was found to be intact. There was no discharge and injury. **According to him, they came to the conclusion that there was no sexual penetrative assault.** As there was forehead injury, in his report it was mentioned that non-penetrative sexual assault could not be ruled out. He identified report Exhibit 57.

While under cross, he admitted not carrying original case papers. To a question whether the colour of injury in question changes after four to eight hours, he denied and according to him it changes after 48 to 56 hours. Rest is all denial.

14. **PW6** is the Investigating officer.

ANALYSIS AND CONCLUSION

15. On analysis of the evidence, it seems that crucial evidence is of victim, followed by that of her mother and grandfather. Apparently and admittedly occurrence dated 13.06.2024 is reported on 15.06.2024 i.e. after two days.

16. Though learned counsel for the appellant would attribute delay and possibility of false and afterthought story being supplied, in the considered opinion of this Court, reason for delay is reflected in the FIR itself, i.e. father of the victim to be out of station and only on his arrival, he being informed after which law was set into motion. Even otherwise, in cases of such nature, delay cannot be given undue importance.

17. Here, learned trial court has held accused guilty for offence under Section 354 of IPC and Section 9(m) r/w 10 of the POCSO Act. Let us see whether said offence is proved to be committed.

18. Admittedly, though mother has set law into motion, apparently she has received information from her victim daughter. It is noticed that, according to mother, on 13.06.2024 she gave call to her victim daughter. She claims that her daughter came out running from the

cattle shed and accused also came after her from the cattle shed. She claims that accused was in frightened condition. She claims to have questioned her daughter the reason for crying, upon which accused allegedly said that she was frightened of the cattle. Hearing cries of the girl, her grandfather, i.e. father-in-law of this witness, came out and at that time, victim told that accused removed her nicker and hearing this, her father in law slapped accused, who ran away. Then she claims that she pacified the girl and again asked her, whereupon the girl stated that, accused told that her father had called her and took her to the cattle shed, made her sit on a woven cot, removed his own undergarment and removed her undergarment also. Informant mother claims that her daughter pointed to her own urinal part and said that accused inserted his urinal part there. This witness claims that, she examined her daughter's urinal part and noticed redness and therefore informed her husband as well as Sarpanch and thereafter went to police station and lodged complaint.

19. Here, prosecution has adduced evidence of doctor as PW5 and his evidence is also reproduced above. He has noted that grandmother of the victim narrated the history and thus it is not by informant-mother as claimed by her. Doctor claims to have came across abrasion, but on forehead, and on local examination of private part,

hymen was found to be intact, **there was no discharge and injury** and therefore conclusion was drawn that there was **no sexual penetrative assault**. According to him, as there was forehead injury, non penetrative sexual assault could not be ruled out.

20. Thus, what mother claims to have seen, i.e. redness to the urinal part, is not confirmed by medical expert and he has rather issued opinion that there was no penetrative sexual assault.

21. Though grandfather PW4 is examined and though informant claims that he was also present when the girl returned from the cattle shed, and even when the girl claims that at that time her grandfather was there, this witness has narrated a different story about what victim informed after she was asked as, according to him, victim told that accused removed her nicker, his own nicker. Further according to him, his grandson, a child, was on the lapses of his daughter-in-law, i.e. informant, and victim pointed to the penis of his grandson and said that accused pressed his such part on her private part. Such is not the story of informant mother. Therefore, these two witnesses, in spite of claiming to be together and claiming to have heard victim narrate the incident, have different versions.

22. After carefully examining the victim's evidence, as pointed out by learned counsel for the appellant, she testified that she knew accused. He took her to the cattle shed saying that her father had called and there, in the cattle shed, he removed his own underwear as well as her inner wear and then he left her after which she came out of the cattle shed. As pointed out, she merely spoke about mother to be in the house that day but father was not present. Then she claims that, she addresses her grandfather as 'Baba' and that he had also arrived after she came out of the cattle shed.

Even under cross to a question, she answered that only inner-wear was removed. To a question that she did not meet accused on the day of incident, she confirmed that she had met accused.

23. Consequently, what is emerging from the above evidence is that, though mother claims that victim told her that accused, after removing her undergarment, he inserted his urinal part in her urinal part and though she claims that she noticed redness, medical evidence does not support her such contention. Furthermore, the grandfather, who also was a party to receiving information from victim, has given distinct version as, according to him, victim told that accused pressed his private part on her private part. He does not

speak about any insertion or penetration. Therefore, informant and PW4 grandfather of victim are not lending support to each other.

24. Learned trial court, in para 32 of its judgment, has concluded that, prosecution proved beyond doubt that accused took victim to the cattle shed with intention to outrage her modesty and sexually assaulted her and thereby committed offence under Section 354 IPC and Section 9(m) of the POCSO Act, and ultimately convicted him for offence under Section 354 of IPC and Section 9(m) r/w 10 of the POCSO Act. Though there was charge for offence under Section 376-AB of IPC and Section 4(2) of the POCSO Act, trial court has acquitted accused appellant from said charge. Indisputably, there is no challenge by the State to such acquittal from such charge. Therefore, what trial court has held to be proved is that, there was outraging of modesty and sexual assault.

25. Section 7 of the POCSO Act deals with 'sexual assault', which reads as under :

> *"7. **Sexual assault**. - Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual*

intent which involves physical contact without penetration is said to commit sexual assault."

26. Here, removal of undergarment is the act which is shown to be proved and it is explicitly done with sexual intent. Consequently, in the considered opinion of this Court, when accused has not proceeded beyond removing the undergarment, the act can be said to be an '**attempt** to commit sexual assault'.

27. Before trial court, there does not seem to be serious challenge on the minority of the victim. Admittedly she was three and half years of age. In the light of her such age, indeed Section 9(m) of the POCSO Act gets gravitated which defines 'aggravated sexual assault'. Punishment for this offence is provided in Section 10 of the POCSO Act which is as under :

*"10. **Punishment for aggravated sexual assault.**—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine."*

28. This Court has already formed opinion that here, prosecution evidence shows that there is removal of inner wear and nothing

beyond it. Therefore, it is clearly an offence of attempt to commit sexual assault, and as victim is below 12 years of age, Section 9(m) of POCSO Act would be attracted.

29 Learned counsel for the appellant would submit that, when it is attempt to commit offence, then Section 18 of the POCSO Act also comes into play and the said section is therefore reproduced as under :

> *"**18. Punishment for attempt to commit an offence.**— Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any Act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both."*

30. Objecting the above, learned APP would point to the statement of the victim under Section 164 of CrPC and would submit that in view of the same as well as the testimony of mother, offence under Section 9(m) is clearly made out and that, learned trial court has already shown leniency by awarding only five years imprisonment and not seven years as provided under the said section.

31. In the light of above objection of learned APP, as rightly submitted by learned counsel for the appellant, it is the substantive evidence that would prevail, i.e. of the victim and her mother, and not the statement of victim under Section 164 Cr.P.C. as it is mere corroborative evidence and not substantive one. Informant mother's version does not tally with victim's story and moreover, mother's evidence also does not find support from medical evidence. Consequently, here, Section 18 of the POCSO Act would come into play.

32. Applying the Section 18, which provides for consideration of one half of the longest term of imprisonment, which in case of Section 9(m) is of 7 years, and taking into account half of the said period, the sentence comes to three and half years. Consequently the judgment of trial court to that extent requires to be interfered. Hence, the following order :

ORDER

I. The Criminal Appeal is **partly allowed**.

II. Clauses 01 and 02 of the operative part of the judgment and order dated 17.12.2025 passed by learned Additional Sessions Judge (Special Court), Biloli in Special (POCSO) Case No. 31 of 2024 are hereby modified to the following effect :

> "01. The appellant Ganesh Hotlappa @ Prabhakar Padampalle **is hereby convicted** for offence under punishable under Section 354 of IPC as well as Section 9(m) and 10 r/w 18 of the POCSO Act.
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> 02. The appellant is sentenced under section 10 r/w 18 of the POCSO Act to suffer rigorous imprisonment for three and half years and to pay fine of Rs.20,000/- (Rupees Twenty Thousand only), in default to suffer further rigorous imprisonment for six (06) months."

III. Clauses 03 to 08 of the operative part of the judgment and order dated 17.12.2025 passed by learned Additional Sessions Judge (Special Court), Biloli in Special (POCSO) Case No. 31 of 2024 are hereby kept intact.

IV. The Criminal Appeal is accordingly disposed off.

V. Fees of the learned counsel appointed to represent respondent no.2-victim, which is to be paid by the High Court Legal Services Sub-Committee, is quantified at Rs.10,000/-.

[ABHAY S. WAGHWASE, J.]

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