



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 51 OF 2016

. Sandeep @ Sandesh Diwanji Chandne
Age: 26 years, Occu.: Labour,
R/o. Deolali Pravara, Tq. Rahuri,
Dist. Ahmednagar .. Appellant

Versus

1. The State of Maharashtra
2. XYZ .. Respondents

...
Mr. Rahul A. Tambe, Advocate for the appellant.
Mr. V. S. Badakh, APP for respondent No.1/State.
Mr. S. P. Nimbalkar, Advocate for respondent No.2 (Appointed).
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 20-08-2026

PRONOUNCED ON : 21-08-2026

JUDGMENT :-

1. Convict for charge under Section 354 of the Indian Penal Code (IPC) and under Sections 7 and 8 of the Protection of Children from Sexual Offences Act (POCSO Act) challenges the judgment and order dated 05-01-2016 passed by learned Judge, Special Court and Additional Sessions Judge, Ahmednagar, in Sessions Case No.154 of 2014.

CASE OF PROSECUTION IN BRIEF

2. Prosecution was launched against present appellant on the premise that on 10-09-2013, victim a girl of 14 years, went to bring back the clothes, which were in the courtyard for drying. That time, it is alleged that, accused embarrassed her from backside and grooped her. She bite his right hand and freed herself and went and inform her paternal uncle Bhima Pandit, who set law into motion, on the basis of which, Crime bearing No.258 of 2013 was registered at Rahuri Police Station for offence under Sections 452, 354 of the IPC and under Section 7 read with Section 8 of the POCSO Act.

After chargesheeting accused, trial was conducted vide Sessions Case No.154 of 2014, which ended up in conviction vide judgment and order dated 05-01-2016.

Dissatisfied by the above conviction, instant appeal has been preferred.

SUBMISSIONS**On behalf of Appellant/Accused :**

3. Learned counsel for appellant pointed out that, occurrence took place at 03:00 p.m. on 10-09-2013. That, accused was arrested on the same day at 10:05 p.m. That, in trial Court informant himself has

not supported prosecution but still his testimony has considered by the learned trial Court. According to him, PW2 mother of victim is not eye witness and she has mere hearsay information. He would strenuously submit that, victim has claimed that she took a bite to right hand of accused, but even when accused was put to medical examination, no such bite marks were noticed and therefore, there is possibility of false implication. He pointed out that, learned trial Court merely put into account Section 29 of the POCSO Act for drawing presumption, but according to him, foundational facts itself have not been proved by prosecution. On this point, he relied on the following citations :

- I) *Dola Alias Dolagobinda Pradhan and another Vs. State of Odisha, (2018) 18 SCC 695.*
- II) *Navin Dhaniram Baraiye Vs. State of Maharashtra, 2018 ALLMR (Cri) 4919.*
- III) *Lakhan s/o Kerbaji Sutare Vs. The State of Maharashtra and another, [Criminal Appeal No.445 of 2019 decided by this Court Bench at Nagpur on 18-06-2024].*
- IV) *Pradeep Gulabrao Choudhari Vs. State of Maharashtra and another, [Criminal Appeal (Apeal) No.506 of 2026 decided by this Court Bench at Nagpur on 18-11-2024].*
- V] *Balu Vs. State of Maharashtra, [2023 (2) BomCR (Cri) 835].*
- VI] *Debraj Dutta Vs. State of West Bengal and another, [2026 SCC OnLine SC 664].*

4. As regards to false implication is concerned, he invited attention of this Court to the answers given by accused to the questions under Section 313 of the Code of Criminal Procedure, wherein accused gave explanation about previous quarrel, but the same to not have been considered by learned trial Court. He submitted that, there is no supportive medical evidence also. For all above reasons, he prays to allow the appeal by setting aside the judgment and order of conviction.

On behalf of State and Victim :

5. Learned APP as well as learned counsel appointed to espouse the cause of victim would support the judgment of trial Court on the ground that testimony of victim being consistent, was worthy of credence. They submitted that, though informant uncle resiled, that much part of his testimony, which was of the use of prosecution, has been rightly relied by the learned trial Court. According to them, there is no infirmity or perversity in the impugned judgment so as to interfere.

BRIEF ACCOUNT OF EVIDENCE IN TRIAL COURT AND ITS ANALYSIS

6. Re-appreciated the evidence on record. Prosecution case in trial Court was rested on evidence of five witnesses i.e. PW1

informant, paternal uncle of victim, PW2 mother of victim, PW3 victim herself, PW4 The Head Master i.e. School Authority and PW5 Baband Lande, Investigating Officer.

7. In view of charge under the POCSO Act, it is first to be seen whether prosecution in trial Court proved minority of victim.

PW4 Laxman Shirsath, is Head Master of the school and he placed on record bonafide certificate carrying date of birth as well as he carried original register maintained by school on the strength of which bonafide certificate is issued. He also placed on record school leaving certificate. Both documents are at exh.25 and 26.

8. It is fairly settled position that for determining age of a child of sexual assault, the following documents qualify for consideration and determination of age.

(i) the date of birth certificate from the school first attended, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

9. The Hon'ble Apex Court in the recent case of ***P.Yuvaprakash v. State Represented by Inspector of Police, 2023 INSC 676*** has declared that school transfer certificate is not to be accepted for age determination of a victim under the POCSO Act.

10. Here, in the light of above legal position, if evidence in hand is put to scrutiny, it is noticed that firstly, PW1 informant uncle did not give date of birth of victim and he merely stated that she was 14 years old. Even victim's very mother PW2 does not seem to have supplied date of birth of the victim. PW3 victim has given her date of birth as 23-09-2000. However, PW4 Head Master, who is examined on the point of age, has placed on record merely extract of admission register and school leaving certificate. In the above referred judgment of Hon'ble Apex Court, such documents do not qualify for consideration on ascertainment and determination of age. Birth certificate is not

gathered by PW5 Investigating Officer and therefore, when age is not proved by adducing conclusive proof or evidence on the point of date of birth, it cannot be said that victim was a minor.

11. On the point commission of offence under Section 354 of the IPC, crucial evidence is that of **PW3** victim and she is examined at exh.20. Regarding the incident, she stated that, one year back at around 03:00 p.m., she had been to backside courtyard of house of Bhausahab Sarode to fetch dry clothes. That time she claims that, accused came, hold her hands, pressed her breast and therefore, she took a bite to right hand of accused and thereafter, accused ran away and she went and informed her mother and paternal uncle.

While under **cross-examination**, she answered that, she is not able to state what is written by Police in her statement. Rest is all denial.

However, there is no reason for false implication. The victim has immediately rushed and informed her uncle and mother and her uncle has lodged report exh.31 on the same day. There is nothing in the cross-examination to show false implication. Therefore, on the point of outraging of modesty, evidence of victim deserves consideration.

CONCLUSION

12. Learned trial court has convicted accused for offence under Section 354 of the IPC, and has awarded sentence of rigorous imprisonment for two years and to pay fine of Rs.5,000/-. Applying the test of proportionality, as conviction is of 10 years back and at that time, accused was in his early twenties and sword of conviction hanging over his head since almost a decade, in the considered opinion of this Court, punishment awarded for outraging modesty is required to be reduced to rigorous imprisonment for one year.

As stated above, on careful consideration of record, age of the victim is not proved by adducing conclusive evidence. Therefore, charges under POCSO Act does not get gravitated.

In view of above discussion, the following order is passed :

ORDER

- I. The appeal is **partly allowed**.
- II. Conviction and sentence awarded to the appellant Sandeep @ Sandesh Diwanji Chandne by the learned Judge, Special Court and Additional Sessions Judge, Ahmednagar, in Sessions Case No.154 of 2014 for offence under Section 7 punishable under Section 8 of the POCSO Act, is hereby quashed and set aside.

III. Conviction awarded to the appellant Sandeep @ Sandesh Diwanji Chandne by the learned Judge, Special Court and Additional Sessions Judge, Ahmednagar, in Sessions Case No.154 of 2014 for offence punishable under Section 354 of the IPC on 05-01-2016, is hereby maintained, however, the sentence is modified and reduced and instead of rigorous imprisonment for two years, **he is sentenced to suffer rigorous imprisonment for a period of one (01) year**. There is no change in fine amount, however, in default to pay fine, he shall undergo simple imprisonment for further three months.

IV. Rest of the impugned judgment and order is maintained.

V. Fees of learned counsel appointed to represent the cause of respondent No.2, which is to be paid by the High Court Legal Services Sub Committee, Aurangabad, is quantified at Rs.10,000/- (Rs.Ten Thousand Only).

[ABHAY S. WAGHWASE, J.]

Later on :

13. On pronouncement of this Judgment, learned Counsel for the appellant prays for four weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

14. Considering the above request made by learned Counsel for the appellant, four weeks time is granted to the appellant to surrender.

[ABHAY S. WAGHWASE, J.]