



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 160 OF 2024

. Parmeshwar Kachru Bambarde  
Age : 37 years, Occu.: Private Service,  
R/o. Satalpimpri, Tq.Phulambri,  
District Aurangabad.  
(At present serving the sentence of  
R.I. Imprisonment) ....Appellant

**Versus**

1. The State of Maharashtra,  
Through Police Station MIDC,  
Aurangabad.
2. X.Y.Z.-1  
(Complainant)
3. X.Y.Z.-2  
(Victim) .....Respondents

.....  
Mr.Nikhilesh K.Tungar, Advocate for Appellant.  
Mr.G.O.Wattamwar, APP for Respondent No.1.  
Ms.Suvarna Zaware, Advocate for Respondent Nos.2 & 3 (Appointed).

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**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 03-09-2026

Pronounced on : 04-09-2026

**JUDGMENT :**

1. Appellant, a convict for offence under Sections 376(f), 354-B, 323, 506 of the Indian Penal Code (IPC), under Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act (POCSO Act),

and under Section 75 of the Juvenile Justice Act, hereby challenges Judgment and order dated 04-12-2023 passed by the learned Special Judge (POCSO), Aurangabad, in Special Case (POCSO) No.325 of 2022.

### **BRIEF FACTS OF THE PROSECUTION CASE**

2. Appellant was indicted and tried on accusations that, on 23-08-2022, while informant mother away for work, her minor daughter studying in 2<sup>nd</sup> Standard was alone in the house. Accused, who was uncle of victim and was residing in the same house, removed clothes of victim, got himself undressed and had penetrative sexual assault. When informant mother returned home, she noticed injury on the lips of victim daughter and on questioning to that extent, child disclosed the incident happened with her. Therefore, on next day, she lodged report, resulting into registration of Crime bearing No.310 of 2022 for above offences.

The crime was investigated by PW6 Investigating Officer, who after gathering sufficient evidence, chargesheeted accused, who was ultimately tried vide above numbered special case.

At trial, prosecution has adduced evidence of as many as seven witnesses apart from relying on documentary evidence. After recording statement of accused under Section 313 of the Cr.P.C., oral

and documentary evidence was appreciated and learned trial Judge accepted the case of prosecution for above charges. Said Judgment and order is now challenged before this Court.

### **SUBMISSIONS**

#### **On behalf of Appellant :**

3. Learned counsel for appellant questioned the sustainability and maintainability of impugned Judgment primarily on the ground that there is no convincing and legally acceptable evidence on behalf of prosecution. He would submit that, though age of victim is not disputed, accused pleaded innocence and alleges false implication by submitting that infact there were love relations between informant and accused and informant was interested in grabbing property, which stood in the name of wife of accused and when such request was not conceded, false report has been filed. That, there is no sufficient corroboration to the version of victim or her mother from medical evidence. He pointed out that, going by the phrases used in the testimony, it is doubtful whether there was penetrative sexual assault. He would point out that, scientific evidence i.e. Chemical Analyzer's (CA) report belies prosecution version as neither semen nor blood is noticed on the garments of either the victim or accused.

4. On the count of medical evidence, learned counsel took this Court through Medico- legal Examination Report and would point out that, examining Doctor has noticed that there are no injuries on the lips of victim and therefore, he raises doubt over the version of informant that there were burns inflicted on the lips of victim. He then pointed out that, there was old healed tags and there are no signs of force noticed by the examining Doctor. He would submit that, even when alleged occurrence is of 23-08-2022 and medical examination was on the very next day, how no resistance injuries are noticed by the Medical Officer. That, even no Benzidine test is conducted while analyzing the muddemal clothes.

5. By further questioning observations and findings of learned trial Court, more particularly, on applicability of Sections 29 and 30 of the POCSO Act, according to him, Section 29 of the POCSO Act can be invoked only when there is offence under Sections 3, 5, 7 and 9 of the POCSO Act, but here, conviction is not recorded for any of the said offences and rather, it is recorded under Sections 4, 6, 8, 12 of the POCSO Act. According to him, further for drawing presumption available under Section 29 of the POCSO Act, it is incumbent upon prosecution to prove foundational facts of the case, which he would submit that such facts are not proved in this case so as to invoke the

same. According to him, unless testimony of the victim is credible and trustworthy, it is not open for prosecution to take aid of presumption available under the said Act. On this count, he seeks reliance on the Judgment of the Hon'ble Apex Court in the case of ***Debraj Dutta v. The State of West Bengal and Another*** passed in Criminal Appeal No. of 2026 (@ SLP (Cri.) No.16838 of 2025 as well as Judgment of this Court in the case of ***Gautam Chandrakant Khairnar v. The State of Maharashtra***, 2022 ALL MR (Cri) 2585.

6. According to learned counsel, if there is offence of penetrative sexual assault by a person of 42 years of age on a minor like victim, who is said to be 6 years of age, then there has to be struggle or injuries on the person of victim as well as accused and he would submit that, Medical Expert, who examined accused, has not come across any such injuries. Even he also points out that, when a person of such age commits rape on a minor child, then definitely there has to be injury even on the private part of the accused, but here it is missing. Thus, according to him, it is unsafe to rely on prosecution story about commission of penetrative sexual assault. In support on such submission, he seeks reliance on the Judgment of the Hon'ble Apex Court in the case of ***Ram Singh v. The State of Himachal Pradesh***, 2026 INSC 830.

7. Lastly, he submits that, case of prosecution is not proved beyond reasonable doubt, and thus he urges to allow the appeal by setting aside the impugned Judgment and order.

**On behalf of State and Informant and Victim :**

8. Per contra, learned APP as well as learned counsel for informant and victim, both would support impugned Judgment. According to them, learned trial Court has rightly appreciated and also relied on the testimony of victim and her mother, and according to them, their testimonies having remained unshaken, deserved credence and reliance. According to them, testimony of victim is finding support from medical evidence and examining Doctor having categorically opined to that extent. They both submit that, mere negative scientific report would not overshadow the convincing and legally acceptable trustworthy evidence of child victim. Reliance is sought on the Judgment of *Darbara Singh v. State of Punjab*, (2012) 10 SCC 476, *B.C. Deva @ Dyava v. State of Karnataka*, AIR 2007 SC (Supp) 678 and *Narayanamma (Kum) v. State of Karnataka and Others*, (1994) 5 SCC 728 respectively and they urged to dismiss the appeal for want for merits.

**BRIEF ACCOUNT OF EVIDENCE BEFORE TRIAL COURT  
AND ITS ANALYSIS**

9. Re-appreciated the oral and documentary evidence. **PW1** is victim, **PW2** is her mother and informant, **PW3** seems to be pancha to spot panchanama, **PW4** is the Head Master of the School where victim studied. **PW5** is Gram Vikas Adhikari, **PW6** is the Investigating Officer, **PW7** is the Medical Expert.

10. In view of candid submission by learned counsel for appellant as there is no serious challenge to the minority of the victim, evidence of **PW4** Head Master need not be re-appreciated. Here, there is both birth certificate as well School record reflecting age of victim and therefore, undisputedly victim is proved to be a “minor”.

11. Now, it is to be seen whether offence as alleged is proved by prosecution beyond reasonable doubt. On this count, as usual it is the testimony of the **PW1** victim followed by evidence of **PW2** her mother/informant and **PW7** Medical Expert.

Victim's testimony is at Exhibit 26. It is noticed that, the trial Court by putting preliminary questions, got itself assured that by going by age of victim, she does not understand sanctity of oath and therefore, oath was not administered. Victim deposed that, she was

studying in 3<sup>rd</sup> Standard and in previous year, she was in 2<sup>nd</sup> Standard. That, she resided with her mother, uncle and sister. According to her, when she was in 2<sup>nd</sup> Standard, at that time, the incident took place. That, on the date of incident, she and her uncle/accused were at home. That, her mother had been to work whereas her sister went to attend school. She deposed that, her uncle removed her clothes, removed his own clothes and on the pretext of playing “*Ghoda Ghoda*”, she deposed that, he inserted his male organ in her private part and moved back and forth. According to her, he also gave burns to her lips with a matchstick and threatened her not to inform her mother. According to her, this happened in the morning. In the night at around 08:00 p.m. she told about it to her mother, who questioned her uncle, who allegedly beat her mother. He also tied her mother in one room and made her sleep and in the morning, they had been to Police Station.

Child is subjected to **cross-examination** on the point of her favourite subjects, her favourite teachers and her favourite games, which she named as Running and Kho-Kho. She denied that her mother tutored her as to what to state in the Court or about it being told to her in the office to state so. She denied that, she did not inform her mother about accused removing his own clothes or about her uncle playing “*Ghoda Ghoda*” with her. She denied that no such

incident took place including denial that uncle was not residing with them and she also denied that on 23-08-2022, she was residing with her father. So much is the only cross-examination.

12. Now, let us advert to the evidence of PW2 Informant and mother of victim, which is at Exhibit 27. Admittedly, this witness has learnt about incident from victim. But in paragraph 3 of the examination-in-chief, she deposed that occurrence is of 23-08-2022. That, on that day, she had been to work in the company, and she returned at 02.30 p.m. At that time, her younger daughter was in the house, but victim was in the School. At around 08:00 p.m. she claims to have noticed injury on the lips of her victim daughter and after taking her in confidence, when she enquired, she learnt that, when she had been for work, at that time, accused uncle removed her clothes, removed his own clothes, put his male organ in her private part and moved back and forth. She claims to have also learnt that, when she was crying, she was given burns by matchstick on her lips threatening her not to inform her mother. Therefore, she enquired with accused, but he issued threats to her and also threatened to kill her and as well as her daughter and therefore, she claims that, she did not report to anyone. On the next day, she reported it to her superiors in the company and accompanied them to Police Station

and lodged complaint Exhibit 28. Thereafter, on the next day, she states that, victim was referred to medical examination and they both went there, but as her daughter was crying and not prepared, she was not medically examined and so they returned home. After 5-6 days, victim daughter was taken for medical examination and she was medically examined.

Informant mother is also subjected to **cross-examination** wherein she answered that, she studied up to 10<sup>th</sup> Standard, she is unable to provide any documents related to her service and any lease agreement of house. She stated that, she was married in 2011 and her husband did mason work, but he was addicted to liquor. She denied any quarrel between them on such count or filing divorce petition against him. She affirmed about service of accused at Airl Tower. Rest is all denial.

13. To corroborate above testimonies, prosecution has adduced evidence of **PW7** Medical Expert. He deposed about receiving requisition Exhibit 60 dated 03-09-2022 and after obtaining consent of mother of victim on Exhibit 61, he testified about recording history from mother of the victim, who told him that, the man, who is her cousin's husband, was in relation with her. That, on 23-08-2022 victim was assaulted at around 10:00 a.m. after removing clothes and

having peno-vaginal intercourse and inflicting burns on the lips, where she had small abrasion. He reported that, history was also given of similar episode 3-4 months ago regarding molestation of victim. In paragraph 2 of examination-in-chief, he testified that, on Medico-legal Examination, he found tear to the hymen which was old healed tags. There were no signs of use of force but he opined that sexual intercourse cannot be ruled out and findings were reserved for availability of FSL report. He identified medical examination report at Exhibit 62. Then he deposed about gathering samples and on going through FSL report, he answered that, there were no signs of use of force, however, sexual intercourse cannot be ruled out.

There is one liner **cross-examination** wherein he answered that, urethral part of girls is for passing urine and he cannot say firmly about sexual intercourse.

14. Pointing to the above evidence, learned counsel for appellant would submit that, PW1 victim's testimony is not credible and secondly, medical evidence negates sexual assault as alleged. His principal ground is that, when a man of 42 years age inflicts penetrative sexual assault then necessarily there has to be signs or marks of force, resistance and struggle, but the same are missing in medical examination report. He also relies on notings/remarks in the

### Medico-legal Examination Report.

15. Here, from the testimony of PW1 victim and PW2 her biological mother with whom victim is residing, it has come on record that, accused was victim's uncle and they both resided with him. PW2 informant mother has herself deposed that, she was in relationship with him. There is no serious challenge to stay of accused with victim and informant. It has also come on record that, informant mother renders labour work and she goes out for the same. Therefore, there are reasons for victim to be alone in the house in the morning before she went to school. Victim in her testimony has stated that accused, her uncle, removed her clothes, and also removed his clothes and made her play "*Ghoda Ghoda*" and she specially stated that, he inserted his male organ in her urinal part and also moved back and forth. Said incident had allegedly taken place on 23-08-2022.

PW2 Informant, mother of victim, has deposed that, she learnt about incident at around 08:00 p.m. in the night and on the next day, she reported occurrence to Police i.e. on 24-08-2022. She has also deposed that thereafter, victim were referred for medical examination and she did take victim to the hospital, but as the child was mentally upset and crying, no such examination could take place that day. She has categorically stated that, after 5-6 days thereafter,

victim was taken for medical examination. It is to be noted that, mother of victim is a labour and so she may not be very precise of about the date on which she has to carry child for medical examination.

In view of testimony of PW7 Medical Expert, medical examination seems to have been done on 03-09-2022 i.e. after almost 09-10 days after alleged incident in question took place. Therefore, it is thus possible that there may not be fresh injuries or fresh tear and Doctor has noticed old healed tags. It is equally possible that the child was not noticed to be suffering burn marks on her lips on the date of such examination and due to laps of time, such marks cannot be patently visible.

Therefore, this Court does not find any force in the submission advanced by learned counsel for appellant that there were no burn marks or fresh injuries on the person of victim. Consequently, this falsifies the version of accused. PW7 Medical Expert has noticed tear to the hymen, which itself is sufficient to show that there was sexual assault.

16. Though victim and her mother are cross examined, there testimonies about occurrence have virtually remained unshaken.

Even statements of both, victim and her mother, recorded

under Section 164 of the Cr.P.C. at exh.30 and exh.31 are consistent.

17. Learned counsel for appellant would also strenuously submit that scientific evidence does not support prosecution story and therefore, narrative of prosecution about sexual assault belies and falsifies the same.

It is noticed that, PW7 Medical Expert has gathered necessary samples of victim on 03-09-2022. PW6 Investigating Officer deposed that she collected and seized clothes of both, victim and accused, vide panchanama Exhibit Nos.35 and 36. Samples were received from GMCH, Aurangabad and seized clothes were sent to CA for analysis vide communication dated 30-08-2022 Exhibit 51. Therefore, there is a week's delay in despatching the samples and thus, it is possible that CA has not noticed semen or blood on the clothes of victim and accused. Even otherwise, it is not story of prosecution that, because of the penetrative sexual assault, there was any bleeding.

18. Learned counsel for appellant would question the story of prosecution on the count that, it is not possible that when a man of 42 years age sexually ravishes a child of 6 years, he may not suffer injuries on his male organ.

Law is fairly settled that even slightest penetration is considered as rape and therefore, when victim is barely six years of age and she was all alone in the house, there may not have been resistance, more particularly, when there are threats. Accused has nowhere denied that he did not reside with victim or informant nor adduced any evidence to that extent.

The Hon'ble Apex Court in the case of ***Dola @ Dolagobinda Pradhan and Another v. State of Odisha***, (2018) 18 SCC 695, has enumerated and summarized the principles as to when sole testimony of prosecutrix can be relied for convicting accused. In paragraph 6, the Hon'ble Apex Court has observed as "*It is well-settled that version of prosecutrix is believed, basic truth in her evidence is ascertainable and if it is found to be credible and consistent, the same would form the basis of conviction. Corroboration is not a sine qua non for conviction in rape case. The evidence of victim of sexual assault stands on par with the evidence of an injured witness and is entitled to great weight, absence of corroboration notwithstanding. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist for corroboration.*"

Law to such extent is reiterated in numerous judgments including Judgment of Hon'ble Apex Court in the case of ***State of***

***Himachal Pradesh v. Manga Singh*** (2019) 16 SCC 759 and the relevant paragraph for ready reference is borrowed and quoted hereunder :

*“10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. **The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances.** Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.*

*11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basis infirmity and the “probabilities factor” does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”*

Hence, in light of the evidence of PW7 Medical Officer which is credible, above ground has not force.

19. Perused the judgments of the Hon'ble Apex Court relied by accused as well as prosecution and the same are on settled legal

position of which there is no dispute. Each case has to be dealt as per its facts and circumstances.

Here, on complete re-appreciation of evidence on record, this Court is of the considered view that, victim, a minor, was ravished by accused while she was alone in the house. Mere negative CA report will not cast shadow over victim's testimony, which has remained unshaken. Finding no merits in the appeal, the same deserves to be dismissed. Accordingly, following order is passed.

### **ORDER**

- I. The Criminal Appeal is dismissed.
- II. Fees of the learned counsel appointed to represent respondent Nos.2 and 3, which is to be paid by the High Court Legal Services Sub-Committee, Aurangabad, is quantified at Rs.10,000/-.

**[ABHAY S. WAGHWASE, J.]**