



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 285 OF 2022

Nandu s/o Mohan Kardile,
Age 44 years, Occupation Agriculture,
R/o Kada, Taluka Ashti,
District Beed.

... Appellant
[Orig. Accused]

Versus

1. The State of Maharashtra,
Through : The Police Station Officer,
Ashti, Taluka Ashti, District Beed.

2. X. Y. Z.

... Respondents

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Ms. Mangal R. Chavan, Advocate for the Appellant (Appointed).

Mr. N. D. Raje, APP for Respondent No.1-State.

Ms. Rashmi Kulkarni, Advocate for Respondent No.2 (Appointed)

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 19.08.2026

Pronounced on : 20.08.2026

JUDGMENT :

1. In the instant appeal, there is challenge to the judgment and order dated 18.07.2019 passed by learned Special Judge, Beed in Special (POCSO) Case No. 41 of 2018, by which appellant stood convicted for offence under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 376(2)(f)(i)(n) of IPC.

2. This is one of the most unfortunate cases, wherein biological father has committed above offence on his own daughter since she was studying in 3rd standard. She was repeatedly ravished till she was admitted in a school in Pune where she disclosed about it to one case worker, who in turn informed Child Welfare Committee (CWC) at whose instance PW2 set law into motion resulting into registration of “zero” crime and it was further transferred to Beed where offence was registered for above sections. After completion of investigation, accused was chargesheeted and finally tried by Special Court, who on appreciating the evidence, accepted the case of prosecution as proved beyond reasonable doubt and convicted appellant. Hence, instant appeal.

SUBMISSIONS

On behalf of the Appellant :

3. Learned counsel appointed to represent the appellant pleaded innocence and false implication by pointing out that, there is no convincing, cogent and reliable evidence. She attacked and criticized the story of prosecution primarily on the ground of delayed reporting. According to her, there is no witness. She questions the unnatural conduct of mother, who, in spite of learning from the victim, did not lodge report. Learned counsel submitted that there is no convincing,

independent testimony and only interested witnesses are examined. That, medical evidence is not supporting prosecution. That, medical expert categorically stated that there were no fresh injuries and there to be old tear and therefore, she questions the allegations of forceful sexual rape. She pointed out that, learned trial court has not considered and appreciated the defence evidence in its proper perspective. According to her, to avoid repayment of borrowed amount by uncle, there is false implication.

On behalf of the Respondent-State :

4. Learned APP, who supported the judgment, pointed out that accused, since his daughter victim was in 3rd standard, used to commit sexual intercourse with her. That, victim narrated the ordeal faced by her to the school authorities, who in turn reported it to CWC, who took prompt action of getting complaint lodged through PW2. Evidence of PW2 has remained unshaken. Even testimonies of both aunts of victim are intact on the point of act of accused. He submitted that, there is convincing evidence about minority of the victim.

5. As regards to delay is concerned, learned APP invited attention of the Court to the observations of trial court in para 25. He pointed out that, mother is illiterate, rustic villager and allegations being

against her own husband, out of fear of shame and defamation, mere understanding was given to the accused. There is convincing medical evidence and therefore, learned trial court committed no error in returning guilt of the accused. He urges for grant of compensation to the victim by seeking reliance on the judgment of Hon'ble Ape Court in the case of *Bhanei Prasad @ Raju v. State of Himachal Pradesh* AIR OnLine 2025 1297.

On behalf of Respondent No.2-Victim :

6. Learned counsel appointed to espouse the cause and interest of victim, would also put up stiff resistance to the appeal. She pointed out that, in trial court there is no challenge to the minority of the victim and moreover, she pointed out that, accused while answering under Section 313 of Cr.P.C. has also admitted the age of victim, who is his own daughter. That, coupled with it, there is birth certificate and as such, according to her, there is overwhelming evidence on the point of age and minority of the victim. She pointed out that, victim withstood the grueling cross. That, she has remained steadfast on being ravished multiple times by none other than her father since she was in 3rd standard till she studied up to 5th standard. That, the ordeal faced by the victim has been narrated by her in her testimony. That, all suggestions put by defence are denied in *toto* by her.

7. On the point of delayed reporting, it is her submission that, mother being illiterate and being of low IQ with simpleton nature, there was no prompt reporting. Moreover, accused was her own husband and therefore, there was no prompt reporting. She pointed out that, even accused, while facing inquiry under Section 313 of Cr.P.C., has admitted that his wife was simpleton. Resultantly, in her submission, delay is attributed to the above reasons. Lastly, she submitted that, though defence of false implication in the backdrop of money transaction is put forth, accused failed to probabalize his defence and no quarrel or dispute on the point of money is brought on record in spite of examining two witnesses. Thus, she too supports the judgment and order of conviction and prays to dismiss the appeal for want of merits.

STATUS OF WITNESSES

8. In support of it case, prosecution has examined in all nine witnesses. Their status is as under :

PW1 is the victim

PW2 is the complainant, who set law into motion vide complaint Exhibit 24.

PW3 is the maternal aunt of victim.

PW4 is the mother of victim.

PW5 is the medical expert.

PW6]
and] are the panchas to recovery of clothes and spot respectively.
PW7]

PW8 is the Investigating Officer.

PW9 is Doctor, who examined accused.

Accused has also examined two defence witnesses i.e. DW1 and DW2.

ANALYSIS AND CONCLUSION

9. Re-appreciated the evidence of above witnesses. There being charge under POCSO Act, it is first to be ascertained and determined as to whether victim is proved to be a minor.

10. **PW1** victim gave her date of birth as 21.08.2004. Her mother has not given age of the victim. Investigating Officer has gathered school admission extract, but apparently it is of 3rd standard and date of birth in the same is noted as 21.08.2004. However, there is no evidence in the form of birth certificate or school admission record of the 1st standard. Be it so, as there was no serious challenged to the age and minority of the victim in the trial court by defence, taking the

date of birth narrated by victim herself into account, and also the admission extract, though it is of 3rd standard and not of 1st standard, she was indeed not above 18 years of age by any standards, and therefore, was a minor.

11. As regards to offence under the provisions of Sections 4 and 6 of the POCSO Act and Sections 376(2)(f)(i)(n) of IPC is concerned, testimony of victim is of significance. Of equal significance is the evidence of PW2, an independent lady witness who set law into motion. Therefore, at the outset, her evidence is required to be dealt with.

12. **PW2** at Exhibit 20 deposed that, she works as a Superintendent in the Girls Observation Home at Nana Peth, Pune. That, on 16.06.2018, one Smt. Pathak, who was social worker of Maharshi Karve Stree Shikshan Sanstha, Pune, brought victim before her in view of order of CWC, Pune. Said Pathak madam gave application and narrated to this witness about victim to have faced sexual assault by her father and victim was duly admitted in the Observation Home on 16.08.2018 and since then she was residing with her. This witness claims that she noted case history of the victim wherein she narrated she to be resident of Kada and that, when she was studying in 3rd

standard, once while her mother was sleeping at midnight, her father came to her bed, placed his hand on her breast, undressed her, got himself undressed and placed his penis in her vagina and had sexual intercourse with her. Victim reported that he did this act two to three times a week when her mother was sleeping. She reported it to her mother who questioned her father, but her father refused any such occurrence taking place. Thereafter she disclosed the incidence to her aunt when she was in 5th and 6th standard, and her aunt and other relatives visited Kada and assaulted her father. That, during summer vacation of April 2018, she was brought to the above school and then Pathak madam intimated CWC, who brought victim to the office of this Witness and therefore she lodged complaint as per the order of CWC which she identified to be at Exhibit 24.

Nothing adverse or damaging has been brought in the cross of above witness.

13. The star witness is the victim herself and she has deposed in the capacity of PW1. At Exhibit 15, she gave her date of birth as 21.08.2004 and place of birth as Shrigonda. After giving details of her family, she deposed that she was studying in 7th standard in Zilla Parishad Central Primary School, Kada. She also deposed that her

mother was simpleton. According to her, while she was studying in 3rd standard, during summer vacation, while she slept in the house, her father came near her, undressed her and placed his male organ in her vagina. She deposed that it was painful and troubling for her. She claims that she tried to give call to her mother, but he gagged her mouth and even threatened her. On next morning when she narrated the incident to her mother, she merely questioned her father about it, but he denied it. Then she deposed that, because of the penetration, she had suffered pain for three to four days and deposed that again her father did this act with her twice-thrice in a week, i.e. when her mother was sleeping. Then she narrated that during summer vacation when she was in 5th standard, she went to her maternal aunt and narrated the incident her maternal aunt, who assaulted her father. She claims that after vacation she returned home, but again her father started misbehaving with her and did the same thing with her. She claims to have used phone of one Jaya and intimated to her maternal aunt, after which her aunt, aunt's husband, maternal uncle, mother's father all came to Kada and beat her father, after which accused assured that he would not repeat it. Her uncle and aunt took her to their house, but when she again went back to Kada, her father repeated the incident of rape with her. Then she reported that in the month of April-May 2018, on account of vacation, she went to her

maternal uncle and aunt, who shifted her to Pune for further education, i.e. because of the repeated incidences of rape by father. She deposed that she was admitted in Maharshi Karve School in 8th Standard and there she narrated the facts to Rathod madam, who took her to CWC, Pune and then being taken to Police Station, where her statement was recorded which she identified to be at Exhibits 16 and 17. There is a noting in the evidence by trial court that accused was shown on the screen of deposition center and she identified him to be her father and there is also a note that witness started weeping and the Court tried to solace her and provided time for rest. Thereafter she faced cross. Relevant cross is as under :

During cross, she denied that she resides in a joint family. She answered that her school was 4 kms. away and she went with her friends and came back with them. She admitted that one lady teacher was teaching them in school, but answered that she did not narrate the incident of sexual assault by her father, i.e. while she was studying in 3rd standard, to either of her grandparents nor to her friends or teacher. She answered that, she was not medically treated nor she had been to doctor, i.e. after the first incidence. She deposed that, her father did agricultural work as well as sold *bhel* in the bazar. She denied deposing as tutored by her maternal aunt. All suggestions

are flatly denied by her.

14. PW3 is the maternal aunt of victim and she also, in para 3 of her evidence at Exhibit 29 deposed that, when victim was studying in 3rd standard, her father sexually assaulted her under influence of liquor and that victim initially told her mother and her mother asked accused but he said nothing. Then she deposed that, during summer vacation when the victim went to maternal uncle's place, she informed wife of maternal uncle as well as this witness about her father sexually assaulting her, i.e. by removing clothes committing sexual intercourse with her. That, during summer vacation of 2018 also, victim disclosed that, her father sexually harassed her and assaulted her.

Though this witness is cross examined, there is denial in *toto* including suggestion that accused demanded money back from her brother resulting into quarrel.

15. PW4 mother deposed that, while her daughter was in 3rd standard, she learnt from her daughter that her father misbehaved with her by removing her clothes and had sexual intercourse with her. She claims to have questioned her husband, but he refused and

therefore, her daughter went and informed brother of this witness during the summer vacation after 5th standard, and her brother and his wife came and assaulted her husband. That, as her husband sexually assaulted her daughter, relatives decided to send victim to school at Pune.

Even in cross of above witness nothing damaging to the prosecution has been elicited by the defence.

16. PW5 is the medical expert who noted the history and on physical examination, noticed multiple old healed tears, i.e. at 10 o'clock, 11 o'clock, 6 o'clock and conclusion was reached that there was evidence of vaginal penetration with evidence of no injury on other parts of the body.

In cross, above medical expert has expressed probability of minor victim sustaining injury to vagina on account of sexual assault. Rest is all denial.

17. PW6 and PW7 are the pachas to seizure of clothes and spot respectively.

18. PW8 is the Investigating Officer who narrated all steps taken by him during investigation.

19. PW9 is the Doctor who examined accused.

20. Though defence has adduced evidence of DW1 and DW2, case of defence about false implication on the point of money transaction is not even probalilized.

21. On complete and meticulous re-appreciation of above evidence, here, it is evident that victim is none other than the daughter of accused, and she has been sexually ravished multiple times by her own biological father. Here, protector has become predator. He has apparently misused his position as a father and it is rather a profound betrayal of familial trust. The incidences as narrated by the victim are since when she was in 3rd standard and was a helpless child, whose mother was reported to be a simpleton. Victim has narrated that, she was gagged by her father while committing the above offence on her. She has narrated that the incidences used to take place twice-thrice in a week. No child would manufacture false story and thereby implicate her own guardian for no reason.

22. When information to mother did not yield any fruitful result and as sexual assault continued, victim seems to have narrated the ordeal faced by her to her maternal aunt at Shrigonda and her uncle and other family members also gave thrashing to him. Victim as well as her mother have narrated that accused assured not to repeat the said act, but he continued to indulge in the same, and it is evident from the testimony of the victim. Finally, only when victim was rightly thought to be shifted and separated from the company of accused and admitted in a school at Pune, there victim seems to have disclosed the assault on her to a case worker, who in turn seems to have approached CWC, who after verifying and ascertaining the story of victim, has directed PW2 to lodge report. It is in that backdrop, the occurrence has come to light.

23. Medical evidence, as discussed above, substantiates multiple forceful sexual acts on the victim who is proved to be a minor. Therefore, in the considered opinion of this Court, prosecution indeed has succeeded in establishing the charges. Accused failed to probabalize his defence.

24. As regards to delayed report is concerned, there are reasons and circumstances resulting into delayed action for the reasons stated above, i.e. only when the victim was at Pune, and free from the fear

and clutches of her father, she seems to have mustered courage to report the events with her to PW2, who has set law into motion. In cross of none of the witnesses, defence could shake their testimony, more particularly of victim, as she is found to have denied all suggestions put to her and has rather remained steadfast on the count of sexual assault on her which she reported in her chief.

25. Perused the judgment. This Court has noticed that trial court has considered and appreciated the evidence of each of the witnesses in entirety, including cross-examination, and by assigning sound reasons, has accepted the case of prosecution as proved beyond reasonable doubt. No perversity or patent illegality is brought to the notice of this Court so as to interfere. Hence, following order :

ORDER

- I. The Criminal Appeal is hereby dismissed.
- II. Fees of learned counsel appointed to represent the appellant as well as the learned counsel appointed to espouse the cause of the respondent victim, which is to be paid by the High Court Legal Services Sub-Committee, Aurangabad, is quantified at Rs.10,000/- (Rupees Ten Thousand Only) each.

[ABHAY S. WAGHWASE, J.]