



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 136 OF 2016

Ajit @ Balu s/o Rameshrao Shete,
Age 42 years, Occupation Agriculturist,
R/o. Sushiladevi Nagar, Old Ausa Road,
Latur, Taluka and District Latur.

... Appellant
[Ori. Accused]

Versus

The State of Maharashtra,
Through Police Station Shivaji Nagar,
Latur, Taluka and District Latur.

... Respondent

.....
Mr. Tukaram M. Venjane, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 22.09.2026

Pronounced on : 23.09.2026

JUDGMENT :

1. In this appeal by convict, there is challenge to the judgment and order dated 29.02.2016 passed by learned Additional Sessions Judge-2, Latur in Special Case (POCSO) No. 50 of 2014, by which appellant is held guilty for offence under Sections 354-A, 354-D, 506 of IPC and Sections 8, 11(iv) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and the maximum sentence awarded is rigorous imprisonment for three years.

2. In short, case of prosecution in trial court was that, victim, a minor studying in 8th standard, used to proceed to school over old Ausa road. Accused appellant used to intercept her way with ill intentions i.e. on 01.09.2014 and 19.09.2014. When she informed about it to her family members, accused was given understanding. However, on 22.09.2014 also, while she was proceeding to school, accused intercepted her, questioned her for attending school, pulled her veil (*dupatta*) and pressed her breast and thereby outraged her modesty. Report to that extent was lodged with Shivajinagar Police Station where crime was registered and it was investigated by PW6 who, after gathering sufficient evidence, chargesheeted appellant-accused and he was made to face trial before the court of learned Additional Sessions Judge, who appreciated the oral evidence of six witnesses examined by prosecution and after hearing both sides, held the charges to be proved and accordingly convicted appellant as stated above. Hence instant appeal.

3. Learned counsel for the appellant-accused took this Court through the evidence of victim, her grandmother and sister, and would submit that they are not consistent. Moreover, according to him, there is sole testimony of victim but the same cannot be relied

primarily for the reason that, there is no corroboration to the same. That, victim was never referred for medical examination and only accused was referred for medical examination.

4. Next limb of his argument is that, when case of prosecution is that grandmother was accompanying victim, how she did not notice the incident or heard shouts and cries by victim. He also questions failure of prosecution in examining the other students who were also on the road. According to him, no independent witness has been examined even when the alleged incident had happened over a crowded and busy road. He pointed out that, testimony of victim in court is at variance than the statement given by her before learned Magistrate under Section 164 of CrPC. He would strenuously submit that, it was the story of prosecution that there was gagging of the victim by handkerchief and that, accused committed the act at knife point, but neither handkerchief nor knife is seized by prosecution and for said reason, he raises doubt about prosecution story.

5. For all above reasons, he questions the story of prosecution as well as sustainability of the impugned judgment and prays to set aside the impugned judgment.

6. In answer to above, learned APP also took this Court through the testimony of prosecution witnesses and more particularly that of victim. He pointed out that there is no challenge to the minority of victim and there is also no serious challenge that she was using AUSA road to reach her school. According to him, accused resided in the same locality and he was persistently intercepting the way of victim with ill intentions. He pointed out that, apart from the incident dated 22.09.2014, on previous occasions also accused used to block way of the victim. That, victim had reported it to her family members and grandmother of victim had asked brother of accused to give understanding to accused and there is no denial to that extent.

7. Learned APP would further submit that, learned trial court committed no error in applying Section 29 of the POCSO Act to draw presumption as, according to him, foundational facts were duly proved by prosecution. For all above reasons, he justifies conviction and prays to dismiss the appeal for want of merits.

8. Heard. Re-appreciated the evidence. Though there is evidence of six witnesses, in trial court, there does not seem to be serious challenge to the minority of victim. Even before this Court, no doubt

is raised about her minority. Here, in view of the nature of allegations and charge, crucial evidence is of victim and the same is re-appreciated.

9. At Exhibit 37, victim testified that she resides with her grandmother and elder sisters and that she was studying in 8th standard. After giving her date of birth, she identified accused before the court and deposed that she knew him. She testified that on 22.09.2014 between 7.00 to 7.15 a.m. while she was proceeding to school, accused approached her, intercepted her way, pulled her veil (*dupatta*) with *mala fide* intention and pressed her breasts after gagging her with handkerchief so that she could not shout. According to her, there was no crowd on the road but few students when came near her, at that time accused fled. She testified that, on 01.09.2014 as well as 19.09.2014, accused had intercepted her way and by pointing knife, threatened her to not to go to school and he also teased her. The last episode dated 22.09.2014 was reported to her father who reached Latur and they approached police.

While under cross, she admitted that prior to 01.09.2014, she was not knowing accused. She is asked whether she in her statement to police stated that accused pointed knife and threatened her on

01.09.2014 and 19.09.2014. The manner of cross in paragraph 3 shows that occurrence is got confirmed as victim has stated that accused pulled her *dupatta* with the same hand with which he held handkerchief and she answered that, he threw her *dupatta* on the ground. She denied sustaining any scratch or bruise. She answered that after throwing handkerchief, accused pressed her breasts. Consequently, such manner of cross shows that there is no serious challenge to the occurrence of outraging modesty. Omission is brought to the extent of incident dated 19.09.2014 during which accused while gagging her mouth, had seen three to four students coming in her direction and accused ran away from the spot. She is unable to assign reason for such details not being reflected in her statement before learned Magistrate under Section 164 of CrPC. Rest is all denial.

10. Therefore, on analyzing above evidence of victim, in the considered opinion of this Court, previous to 22.09.2014, accused had intercepted victim when she was proceeding to school and on 22.09.2014 also he had pulled her veil and had pressed her breasts. To this extent, her testimony has remained intact.

11. As regards to the submission that there is variance in testimony before the court and statement under Section 164 CrPC also, this Court does not find there to be any variance as the act of accused pressing breasts by pulling *dupatta* is even reported before learned Magistrate. So far as non-referral of victim for medical examination is concerned, when the victim in cross has admitted that she had not suffered any scratches or abrasion, there was no question of referring her to medical examination to ascertain injuries on her person. Here, there are allegations of outraging modesty by pressing breasts and as rightly submitted by learned APP, there being no penetrative sexual assault, investigating machinery did not find it necessary to refer her for medical examination and as such, non-referral for medical examination is indeed not fatal for prosecution.

12. Here, apart from testimony of victim, which indeed is inspiring confidence for reasons stated above, there is testimony of PW1 sister of victim and she has also stated that, on 19.09.2014 her sister was crying and she did not attend school and when was asked about the reason, witness claims to have heard from victim that accused used to intercept her while on way to school and threatened her. That incident was reported to father and her father and mother had visited

house of accused and warned accused. She has also deposed about hearing the occurrence dated 22.09.2014 from the victim that after her grandmother left her midway and returned, that time accused pulled her *dupatta* and outraged her modesty. Nothing damaging is brought in her cross so as to disbelieve her testimony.

13. Likewise, there is evidence of father as well as grandmother who are examined as PW4 and PW5 and they both corroborate victim's testimony regarding occurrence dated 22.09.2014 and previous occurrences.

14. Therefore, there is convincing evidence on the point of accused indulging in the act of blocking way of the victim, issuing threats and finally on 22.09.2014 outraging her modesty. There is no reason to doubt the evidence to that extent. Even victim's evidence inspires confidence and seems to be natural evidence. No defence whatsoever has been raised by accused except stating that victim herself did not want to take education at Latur and therefore she falsely implicated him.

15. Perused the judgment under challenge. Learned trial court has rightly appreciated the evidence and taken a possible view that could

emerge on appreciation of entire evidence. There is no infirmity or perversity so as to interfere. Hence, the following order :

ORDER

The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

Later on :

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

17. Considering the above request, **four weeks time is granted to the appellant to surrender.**

[ABHAY S. WAGHWASE, J.]