



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

CRIMINAL APPEAL NO. 913 OF 2025

Ramdas s/o Ramji Prasad (Palya),
Age : 26 years, Occupation Nil,
R/o: Shivsai, Jaibhavani Nagar,
G. No. 11, Aurangabad,
Taluka and District Aurangabad.

... Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Station Officer,
Pundalik Nagar Police Station,
Aurangabad, Tal and District Aurangabad.

2. X Y Z

... Respondents

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Mr. Dhananjay S. Patil, Advocate for the Appellant.
Mr. V. S. Badakh, APP for the Respondent No.1-State.
Ms. Nayana Patil, Advocate for Respondent No.2 (Appointed)

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 24.08.2026

Pronounced on : 25.08.2026

JUDGMENT :

1. Original accused no.1 hereby challenges the judgment and order dated 29.06.2022 passed by learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No. 364 of 2021, convicting appellant for offence under Sections 376(3), 354, 354-A(2) of IPC

and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. Brief snapshot of prosecution case in trial court is that, PW1 victim aged 13 years was put up with her sister, a Nurse, after losing both parents. It is prosecution case that, on 15.07.2021, present appellant and two other boys, i.e. Vaibhav and Nilesh, visited their house and her sister told her that those persons are like her brothers. On 31.08.2021, while she was sleeping in the house at 7.00 am in the morning and her sister had been to attend duty, at that time, appellant obtained keys of the house from her aunt, who had locked the house from outside, opened the door and compelled victim to accompany him for police training. Victim's sister also, on phone, suggested her to go with him and therefore she accompanied him and he took her to a building in a car driven by co-accused Ajay and there, on the pretext of giving massage, he undressed the victim, outraged her modesty by groping her and had sexual intercourse with her, after which he threatened to make the incident viral if she informs anyone, and then he dropped her to her house. On reaching home, she reported the incident to her sister and they approached police and lodged complaint Exhibit 25.

PW4, who was entrusted with the investigation, carried out the same and after gathering sufficient evidence, chargesheeted both accused, who were tried vide Special Case (POCSO) No. 364 of 2021 which ended up in above conviction. Hence the instant appeal.

EVIDENCE BEFORE THE TRIAL COURT

3. Prosecution has, in support of its case, adduced evidence of four witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 is the informant/victim. Her evidence is dealt in detail at appropriate place.

PW2 is the aunt and she deposed in her testimony at Exhibit 34 that, the incident took place after *Raksha-Bandhan*. That day, a boy came early morning at 7.00 am. That time, victim was sleeping in the neighbouring house and she had locked the house during night because victim was alone and her sister had been to hospital to attend night duty. She deposed that, in the morning the said boy came and demanded keys and she inquired its purpose whereupon he told her that victim's sister

had informed him to take victim for police training and therefore she handed over the keys. Then, he opened the door and provided training dress to victim. Then she claims that her husband questioned her for giving keys, but she informed him that she knew the boy and that he had come to meet victim and her sister on *Raksha-Bandhan* and she was introduced to them. Then she deposed that both, victim and the boy, went out of the house by walk.

PW3 is the medical expert who examined victim after noting the history of sexual assault and she noted torn hymen, but stated that, on physical examination she did not notice any signs of force. Lastly she deposed that, sexual intercourse could not be ruled out.

PW4 is the Investigating officer who carried out investigation and chargesheeted accused.

SUBMISSIONS

On behalf of the Appellant-Accused :

4. Pointing to the above evidence, it is submitted that there is no convincing, cogent, reliable evidence. That, there is no corroboration to the testimony of victim. That, even medical evidence does not support accusations of forceful rape. That, very sister of victim is not

examined and that the lady PW2 who is aunt and neighbour, has herself given keys to the accused and there is nothing adverse against the appellant in her testimony.

5. Taking this court through the evidence of the medical expert, it is pointed out that medical findings belie prosecution case of forceful rape as there is no injury on the person of victim. That, there is no evidence about alleged video recording of the incident. That, CA report is not supporting and therefore, it is his submission that, prosecution has utterly failed to bring home the charges, but according to him, in spite of so and in absence of any legally acceptable evidence, learned trial court has accepted the prosecution story by ignoring and overlooking the answers given by the victim as well as the medical expert in the cross. Consequently, he urges to allow the appeal by setting aside the impugned judgment.

On behalf the the respondent-State as well as the Informant :

6. Learned APP as well as learned counsel for the informant, both opposed on the ground that, evidence of victim itself is worthy of credence. That, she has categorically deposed about sexual assault on her. Advantage of acquaintance and loneliness of the victim has been

taken. That, medical witness has deposed about sexual assault to be not ruled out. Precisely for the said reason, they both justify the judgment and order of conviction and pray to dismiss the appeal for want of merits.

ANALYSIS AND CONCLUSION

7. As there are charges under Sections 4 and 8 of the POCSO Act, it is incumbent upon prosecution to, at the threshold, establish that victim was minor. Let us see whether prosecution has discharged its initial burden by doing so before the trial court.

8. PW1 victim gave her date of birth as 15.08.2008 and about she taking education in 9th standard. Second piece of evidence is the birth certificate gathered by the Investigating Officer which is at Exhibit 60. Said certificate is issued by the Municipal Corporation, reflecting date of birth of the victim as 15.08.2008. Therefore, when birth certificate itself is on record which is issued by the local body, then the same carries probative value and therefore, needs consideration while determining age of the victim. There is no challenge to the age of victim by defence in trial court. Resultantly, there is no hesitation to

hold that prosecution proved before the trial court that Victim PW1 was minor on the date of incident i.e on 31.08.2021.

9. Now, it is to be seen whether further offences under Sections 376(3), 354 and 354-A(2) of IPC along with provisions under Sections 4 and 8 of the POCSO Act are made out or not. As usual on this count, reliance can be placed on the testimony of very victim PW1 followed by that of medical expert PW3.

10. On complete re-analysis and re-appreciation of the evidence of victim at Exhibit 24, it is noticed that the victim, who was 13 years of age and studying in 9th standard, was put up with her sister, who was working as a Nurse in a hospital, and both sisters had lost their parents 4 years and 11 years back, respectively. In para 2 of the examination-in-chief, victim deposed that, on 15.07.2021 while she and her sister were in the house, one Vaibhav along with Ramdas, i.e. present appellant, and Nilesh came to their house. She claims that, they were not known to her and her sister introduced them to her saying that they are like brothers. She identified appellant. Then she deposed that on 24.08.2021, appellant accused came to their house for tying *rakhi* and allegedly told victim that he would provide her

police service and for that purpose he would also give her necessary police training. He tied *rakhi* and also suggested commencing the training on 1st September by assuring to provide tracksuit for police training.

11. Regarding the occurrence dated 31.08.2021, victim deposed in para 4 that, as her sister had been to the night duty and she was all alone and sleeping inside the house, her house was locked from outside by her aunt. She deposed that at 7.00 a.m., accused obtained keys of her house from her aunt, opened the door, entered the house, made her wake up and asked her to come for training purpose and when she refused assigning reason of pain to the legs, accused made phone call to her sister during which there were talks between both of them, and then accused gave her said mobile to talk to sister who asked her to go with him for training purpose and therefore she changed her clothes, wore track suit, locked the house and joined him. they walked towards Dargah Chowk. As it was raining, she deposed that, accused saw a car and gave call to one Ajay Thakur and that driver halted the car and she was taken to Beed Bypass near Patilwada hotel. She identified the car driver Ajay Thakur. Then she deposed that there was a two storied house and she and accused went

inside the building on 2nd floor. Two boys were already present there and appellant took her in one room, latched the door from inside and suggested taking practice and then said that for it, massage was necessary. Then she claims that he removed her clothes, touched her breasts and then had physical contact. He also did video recording of the incident in mobile. She claims that he gave her threats that if she informs anyone, then he will make the video of the incident viral and then he left her at her place. Due to pains she was crying, and when her sister inquired, she reported the incident to her sister and thereafter, next day she lodged complaint Exhibit 25.

Relevant cross of victim is dealt hereunder :

Victim answered that, her sister and IO instructed her to give statement in accordance with the complaint. She further answered that she, her sister, one Nilesh and Vaibhav had been to the police station to lodge complaint. She flatly denied that, part of the incident was reported by her to police and part was stated by her sister. She is unable to give name of the scribe of the complaint. She answered that after the incident, and before medical examination, she had taken bath. However, she denied suggestion that she had washed her clothes which were on her person at the time of incident. She

answered that there was no bleeding after the incident and that, there were no injuries on her person after the incident nor her clothes were torn. She stated that she and accused were in that room from 7.00 a.m. to 9.00 a.m. and that no person had seen them entering the building but only while returning, they were spotted by an old lady. She is unable to state whether it was residential area. She is unable to state whether distance between Dargah and Rajeshnagar is 3 kms. and whether it takes 10 to 15 minutes. She answered that in the car there was 9 months old daughter of accused Ajay Thakur. She gave age of the her sister as 19 years and she to be working as Nurse. Rest is all denial.

12. PW2 is the aunt and her testimony is already discussed above. She is not only aunt of victim, but also immediate neighbour. From the testimony of victim, it is emerging that this witness is the custodian of keys of the house, which she handed over to accused on his demand. Victim resided with her sister and when her sister went to attend night duty, the house was said to be locked from outside keeping inside the victim, who was all alone. This witness has deposed at Exhibit 34 that, she knew accused who was introduced to her on the day of *Raksha-Bandhan*. Therefore, she seems to have

handed over the keys to accused on demand. She has marked the arrival of accused that day and has also spotted victim accompanying him walking out of the house. To that extent she has deposed. Nothing adverse is brought in her cross-examination. Rather, suggestion is given to her that, when keys were obtained from her, she was in sleeping mood. In the chief itself, victim has identified accused Ajay and has clarified by reasserting that he is not the person to whom she handed over the keys.

13. Therefore, presence of accused at the house of victim is proved through this witness. She had seen accused taking victim minor with him that day.

14. PW3 is the medical expert who, in her evidence, more particularly chief, deposed about noting medical history of sexual assault given by victim dated 31.08.2021 in a room and assailant having non-consensual sexual intercourse with victim. She has noted tear to the hymen. However, in chief itself she has stated that, on physical examination she did not notice signs of use of force. But again stated that, sexual intercourse cannot be ruled out.

While under cross, she also admitted that, she did not find victim to be habituated to sex and that she did not find any injury marks on her person. That, even after perusal of FSL report, she is unable to firmly state about sexual activity of the victim.

15. Precisely taking above cross into account, learned counsel for the appellant would submit that firstly, there was no forceful act and secondly, medical evidence is not conclusive.

16. Here, taking into account victim's testimony, which is primary and fundamental in view of the charge, this Court has noticed that, victim was taken to the room on the pretext of police training and she was made to undress for giving massage, which, according to accused, was necessary. Victim was 13 years of age at that time, therefore a minor. It is fairly settled position that there is no rule of law that testimony of victim cannot be acted upon without corroboration of material particulars. Even in absence of medical evidence or evidence about no injury or signs of force, charges can be said to be proved if the testimony of the victim inspires confidence. Law to this extent has been expounded and settled in catena of judgments and few could be named as under:

- (a) *State of Maharashtra v. Chandrapraksh Kewalchand Jain*, AIR 1990 SC 658;
- (b) *State of U.P. v. Pappu @ Yunus and anr*, AIR 2005 SC 1248;
- (c) *State of Punjab v. Gurmit Singh & ors*, AIR 1996 SC 1393;
- (d) *Vijay @ Chinee v. State of Madhya Pradesh*, (2010) 8 SCC 191.

Therefore, victim's passive submission cannot be construed to be her consent, more particularly when there are allegations of videography of the incident being done and threatening to make it viral. The Investigating Officer has seized mobile of the accused. The Investigating Officer has stated that, photographs of victim and accused were attached vide panchanama Exhibits 48 and 49. Therefore, there is no force in the submission by learned counsel for the appellant that, there is no recovery or discovery of mobile of accused containing video of the occurrence.

17. To sum up, here, firstly, prosecution has demonstrated that victim was a minor on the date of occurrence. She and her sister having lost their parents, were residing together. Accused was introduced to the victim by her own sister when he had accompanied one Vaibhav who had brother-like relations with victim's sister. Apparently, after introduction on 15.07.2021, accused has gained

entry in the house of victim on 31.08.2021. Prosecution has substantiated this by adducing testimony of PW2. Moreover, there is no reason to disbelieve even testimony of victim and there is no reason brought forth for false implication so as to disbelieve her version. Consequently, victim being minor and her testimony that accused had penetrative sexual assault after outraging her modesty, the charges are squarely brought home. Going by the nature of accusations, delay of a day is not of much significance.

18. Learned trial court has dealt with the available evidence in its proper perspective. As no error or perversity is committed while accepting the case of prosecution, this Court refrains from disturbing the impugned judgment. Hence, the following order :

ORDER

- I. The appeal is hereby dismissed.
- II. 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, Aurangabad, is quantified at Rs.10,000/- (Rupees Ten Thousand only).

[ABHAY S. WAGHWASE, J.]

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