



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.303 OF 2025

Kishor @ Keshya Vijay Pawar
Age: 30 years, Occu.: Laborer,
R/o. Aradgaon, Tq. Rahuri,
Dist. Ahmednagar

.. Appellant

Versus

1. The State of Maharashtra
Through Rahuri Police Station,
Tq. Rahuri, Dist. Ahmednagar.

2. X. Y. Z.

.. Respondents

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Mr. Abhinay D. Khot, Advocate for appellant (Appointed Through Legal Aid).

Mr. N. D. Raje, APP for respondent No.1/State.

Ms. Karishma S. Sarin, Advocate for respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.09.2026

Pronounced on : 04.09.2026

JUDGMENT :-

1. Feeling aggrieved by the judgment and order dated 13.02.2025 passed by the learned Special Judge, under POCSO Act, Ahmednagar in Special Case No.166 of 2022 convicting appellant/accused for offence under Section 363, 376, 376A, 376AB, 376(2)(i)(j) and 307 of Indian Penal Code as well as Section 6 of POCSO Act, convict has preferred instant appeal.

BRIEF FACTS OF THE CASE

2. Prosecution was lodged against appellant on receipt of report from mother of victim that on 18.06.2022, when they went in search of victim daughter towards coconut trees, they heard victim crying and accused was spotted without clothes near her and he was trying to strangle her. Accused was tried to be apprehended, but he managed to shove and run away. Victim was spotted bleeding from her private part. Victim reported that accused removed her clothes, gagged her mouth and did something on her urinal place. The said occurrence was reported to police resulting into registration of crime bearing No.514 of 2022 for above offences. On completion of investigation, accused was duly charge-sheeted for above crime and trial ended up in conviction. Hence, the instant appeal.

SUBMISSIONS**On behalf of appellant :-**

3. Learned Counsel for the appellant would submit that there is false implication coupled with incorrect appreciation of prosecution evidence by the learned Trial Court. He pointed out that case of prosecution is rested on testimony of as many as 17 witnesses, but according to him, said testimonies are failing to inspire confidence, more particularly, that of informant/mother, victim, victim's sister.

According to him, their testimonies are full of material omissions, contradictions and variances and hence, unworthy of credence.

4. At the outset, he questions the prosecution story on the point of minority of victim, as according to him, there is no conclusive proof on the point of age of victim. That, document relied by prosecution in the Trial Court is mere Transfer Certificate. According to him, there is no birth certificate so as to hold victim to be minor and to further attract provisions of POCSO Act.

5. He would further submit that learned Trial Court has not followed the guidelines and principles to be maintained while recording evidence of minor and has failed to adhered to the same.

6. He next pointed out that admittedly informant has hearsay information. Moreover, he questions the story of prosecution as well as the informant's version about having seen the occurrence near coconut tree. He would emphatically submit that in fact spot panchanama does not reflect existence of any coconut tree at or near the spot and therefore, he raises doubt over the prosecution version to that extent.

7. According to learned Counsel for the appellant, some witnesses claim that there was strangulation by means of pant string, but there

is recovery of saree lace. Thus, according to him case of prosecution is rendered doubtful.

8. Criticizing and attacking the prosecution evidence, more particularly, medical expert, it is submitted that, said medical expert contradicts himself on the point of noticing abrasion marks, swelling and redness on private part, as according to him, medical papers drawn by this witness, more particularly, column No.18, do not disclose any injuries. Thus, according to him, such medical account cannot be safely relied.

9. He would question the prosecution story by pointing out that there were no struggle or resistance mark on the person of victim or even accused and moreover, CA reports are inconclusive.

10. He also criticized and attacked prosecution version on the point of seizure of clothes by pointing out that when accused was said to be arrested on 19.06.2022 and if his clothes are shown to be seized on 20.06.2022, how panchas can be shown to be engaged on 20.06.2022, when the communication issued by Investigating Officer was received by the office of Panchayat Samiti, Rahuri, Ahmednagar on 22.06.2022.

On behalf of APP and informant :-

11. In answer to above, learned APP as well as learned Counsel for informant, while justifying the conviction, submit that there is convincing, cogent and legally acceptable evidence. According to him, informant/mother had spotted accused indulging in the above act and he was caught red handed. That, informant/mother has deposed to that extent. Her testimony to that extent has remained unshaken in spite of facing cross-examination.

12. He next took this Court through the testimony of informant/mother and would submit that here there was very birth certificate of the victim on record adduced by prosecution substantiating age of the victim and, therefore, prosecution has proved the age of victim beyond reasonable doubt.

13. He further took this Court through the testimony of victim, medical expert and the findings and would submit that there is corroboration to the testimony of victim. According to learned APP, in the light of accusations, medical expert has noticed injuries to the private part of the victim, of which nothings are taken in the medical papers and there is deposition to that extent in the witness box. Hence, according to him victim's account received support from medical evidence.

14. In answer to Chemical Analyzer's (CA) report, it is submitted that merely because CA findings are negative, trustworthy oral account of victim and her mother cannot be washed out or rendered doubtful. Resultantly, they justify the judgment and order of conviction.

15. In support of his contentions, learned APP relied on the following decisions :-

- i) *Balwan Singh vs. State of Chattisgarh and another, (2019) 7 SCC 781*; and
- ii) *State of Rajasthan vs. Teja Ram and others, (1999) 3 SCC 507*;

ANALYSIS

16. Re-appreciated the entire evidence. Record shows that case of prosecution is rested on as many as 17 witnesses. **PW1** is the mother; **PW2** is the panch to seizure of clothes; **PW3** is the sister of victim; **PW4** is the victim herself; **PW5** is the doctor, who examined victim; **PW6** is the doctor, who treated siblings of victim; **PW7** is the medical expert, who examined accused; **PW8** is the official from Nagar Parishad; **PW9** and **PW10** are the police officials, **PW11** is the medical officer, who examined injury marks on the neck of victim; **PW12** is

the another medical expert; **PW13** is the medical expert, who conducted radiological examination of victim; **PW14** is the Gynecologist, who examined victim; **PW15** is the doctor, who conducted sonography; **PW16** is the Investigating Officer, who charge-sheeted accused and **PW17** is also the police official.

17. In view of charge of POCSO Act also, it is to be first seen whether prosecution has proved that victim was minor or not.

18. On analyzing the evidence, informant/mother gave date of birth of victim as 03.08.2017. By examining PW8, birth certificate issued by Municipality is placed on record and got exhibited. The date over the same is also 03.08.2017. Therefore, in the light of such evidence and further, there being no serious challenge on the minority of the victim in cross-examination, it can safely be held that prosecution did prove in the Trial Court that victim was below 18 years of age.

19. Having put issue of minority to rest, it is to be further seen whether prosecution has proved the charges beyond reasonable doubt.

20. Though case of prosecution is rested on as many as 17 witnesses, crucial evidence is of informant/mother, very victim, her

sister and medical experts.

21. **PW4** is the victim. Trial Court has noted the preliminary preparations before recording testimony of victim and on getting satisfied that she understands the sanctity of oath, thereafter, recorded her evidence. It is noticed that learned Trial Court has made observations on 06.06.2024 about victim to be not able to depose, to be in frightened condition and therefore, thought it fit to give opportunity to call her back after passage of some time and duly recorded her evidence in question answer form on 10.10.2024.

22. It appears that accused is confronted to the victim by showing photographs over arrest panchanama and she identified him to be accused "Keshamama". After answering that he took her to coconut tree, she answered that she was hanged by means of string, thereafter, he removed her pants and after stating so, witness kept mum and, therefore, her mother was called and thereafter when she was asked what he did after removing clothes, witness displayed to the Court her shoulders and answered that after removing the pant, she was suffering from pain in the stomach. She again identified accused on VC as well as the rope and clothes confronted to her. Though above witness is cross-examined, she flatly denied that she was falsely deposing about accused removing her pant. Above is the

only cross-examination.

23. **PW1** mother, who is examined at Exhibit-24, stated that she went with her husband to Manjri in P.H.C. with another daughter and son and returned in afternoon. That time, her eldest daughter came running and informed her that while victim was playing in the courtyard, accused took her towards the coconut tree and, therefore, she and her husband went there. While her husband was searching on one side, she was searching on the other side and she heard cries of her daughter. So, she went in said direction and saw her daughter in naked condition. Even accused was without pants. Her daughter was lying on the floor and accused was trying to throttle her. So she claims to have ran asking accused to leave her daughter and caught hold of him by his collar, but he pushed away and ran from the spot. Her husband followed him. She claims to have seen injury to the neck of victim and when they went towards daughter they saw injury on her neck and blood oozing from her urinal place. Upon which she asked her daughter, who told her that accused was doing something at her urinal place and it was paining. That, he also wiped her urinal place by her own shirt and by drawing the string of her clothes, he tried to strangulate her. She deposed that she had seen blood on her shirt and thereafter, she and their relatives contacted police at night

time. She further deposed that police sent them to rural hospital, Rahuri with medical yadi and so she went there, but as there was no lady doctor, she was advised to go to civil hospital. She identified complaint Exhibit-25 as well as clothes.

. The informant was subjected to extensive cross-examination, initially on the aspect of her marriage and the premises in which she resided, which, according to the defence, belonged to the grandfather of the accused. She denied the same, but admitted that the accused and his relatives resided in the vicinity of her house, though at some distance from it. Then there are questions about ailment of father of accused. She answered that they have close relations with the accused, who used to come to that vicinity. Then she is asked about surroundings of the house. She stated that she did labour work, but denied that they went out of village for the same. She denied that her elder daughter was 16 years of age and answered that her elder daughter look after her children in her absence. She admitted that shouting noise is not audible from her house. About article 2 pant of the victim, she stated that it is a jean pant, but she volunteered and explained that as there were no buttons to it, it was tied by means of string. Thereafter, there is denial and finally, she also denied that there was dispute of land between accused and her uncle.

24. Prosecution has also adduced evidence of elder sister of victim **PW3** and she has deposed that on relevant day, her parents took her younger brother and sister to hospital at Manjri on account of health issue. Prosecution has also evidence of such treating doctor. This witness, who is elder sister of victim, has deposed that after her parents left, as her sister was crying, accused came and took victim on the pretext of offering mangoes. She deposed that when her parents returned, she informed them about accused taking her sister and thereafter, her parents going in search and returning with the sister, who was naked and bleeding from the urinal place.

. Even in her cross-examination, nothing adverse or damaging to the prosecution is brought by defence.

25. From above discussed evidence of victim, her mother and elder sister of victim, it is noticed that victim has narrated the act of accused of removing her pant and doing something, as a result of which she experienced pain in the stomach. Victim seems to have become shy while recording her evidence on above point and she has chosen to remain silent for some time, however, from above discussed evidence of her mother, who by chance, seem to have gone in search of the minor, deposed about her daughter lying down in naked condition, accused to be in naked condition and he is trying to

strangulate her and she has categorically stated about seeing injury mark on her neck as well as blood oozing from her urinal place. She further testified about seeing blood on the shirt of her daughter, which her victim daughter told was used by accused to wipe blood. Though both witnesses are cross-examined, nothing adverse or damaging to the prosecution has been brought so as to doubt their testimonies. Moreover, statements of both of them are also recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure and the same shown to be consistent on the point of occurrence and act of the accused. CA report of clothes of victim shows blood.

26. The prosecution has adduced the evidence of the medical expert, who is examined as **PW5**. In his evidence at Exhibit-40, after recording the history in paragraph No.2, he deposed that the victim was pacified by the nurse as well as her mother. Upon conducting the external examination, he noticed a pressure abrasion mark around the victim's neck, which he measured as 18 cm × 0.5 cm.

. On internal examination i.e. of vaginal parts, doctor claims to have noticed swelling on libia majora and libia minora, hymen to be ruptured and tear to it at 3, 6, 7 O' Clock position with vaginal

bleeding.

. Though above medical expert is subjected to cross-examination, initial cross-examination is on the point of guidelines of keeping lady doctor to be present at the time of examination. He answered that history was narrated by mother and not by police. He admitted that swelling and redness to the libia majora is possible if finger or any object is tried to be inserted and no history to that extent being given by mother or about pressure abrasion mark on the neck. Further, the witness answered that abrasion mark are possible by object like rope. He admitted that, while returning the samples, the same were not sealed and that no panchnama was drawn for drawing the samples. He answered that he did not receive CA report for issuing final opinion and that he did not give opinion about pressure abrasion mark. He also answered that he did not mention in his opinion that swelling and redness could be due to sexual assault. Rest is all denial.

27. Therefore, above discussed evidence of medical expert clearly shows that on external examination of victim, doctor has noticed abrasion mark on the neck, which is attributable to object like rope. Here, string was said to be used. On internal examination, doctor has noticed hymen tear with tenderness and swelling to libia majora and libia minora. Therefore, medical findings are consistent with the oral

evidence, as mother has already deposed about blood oozing from the urinal place (which is also confirmed from CA report).

. Hence, in the present case, the oral account of the mother and that of the victim indeed find support from the medical evidence.

28. Learned Counsel for appellant would point out that according to informant, incident had happened at a spot where there were coconut trees, but spot panchanama to be silent on it. Mere failure to note coconut trees in panchanama is of no significance. Moreover, informant has deposed that she went in search of a victim towards coconut trees and not beneath the coconut tree. Hence, said ground has no force.

29. The ground about failure of prosecution to prove the age is also of no value, because, here, there is very birth certificate on record.

30. As regards the ground about alleged discrepancy concerning the seizure of clothes, merely because the communication issued by the Investigating Officer was received in the office of the Panchayat Samiti on 22.06.2022, it cannot be inferred that the panchas were not available on 20.06.2022 or that the seizure was subsequently fabricated. The date of receipt of the communication in the office, by itself, does not discredit the evidence of the panchas and the

Investigating Officer regarding the actual seizure. In the absence of any material contradiction or evidence showing that the seizure was not effected on 20.06.2022, the said discrepancy is only a procedural irregularity and does not affect the otherwise reliable prosecution evidence.

CONCLUSION

31. Perused the judgment under challenge. Learned Trial Court has dealt with the evidence i.e. both oral as well as documentary and has appreciated the same in correct perspective. The reason and conclusion drawn by learned Trial Court is the possible view that could emerge on even re-appreciation of evidence. There being no merits, the appeal deserves to be dismissed. Hence, the following order is passed :-

ORDER

- I. The Criminal Appeal is dismissed.
- II. The fees of the learned Advocate for the appellant, who is appointed through legal aid, is quantified at Rs.10,000/- (Rupees Ten Thousand only), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.

III. The fees of the learned Advocate appointed to represent the cause of respondent No.2 is quantified at Rs.10,000/- (Rupees Ten Thousand only), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]

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