



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

CRIMINAL APPEAL NO. 688 OF 2023

. Jakir Hussain Malik Hussain Lohawala
Age: 35 years, Occu.: Watchman,
R/o. Dakhani Manjil, Noor Colony,
Town Hall, Aurangabad,
Taluka and District Aurangabad

**... Appellant
(Orig. Accused)**

Versus

1. The State of Maharashtra
Through Police Station Officer,
City Chowk Police Station,
Taluka and District Aurangabad.

2. X.Y.Z.

... Respondents

.....
Mr. Prasad B. Kadam, Advocate for the Appellant.
Ms. Chaitali Chaudhari Kutti, APP for Respondent No.1-State.
Ms. Vandana B. Kakade, Advocate for Respondent No.2 (appointed)
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 08-10-2026

Pronounced on : 09-10-2026

JUDGMENT :

1. Convict for offence under Section 376(2)(f)(i)(n), 506 of the Indian Penal Code (IPC) and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO Act) takes exception to Judgment and order dated 22-11-2022 passed by learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No.336 of 2021.

CASE OF PROSECUTION IN BRIEF

2. In brief, story of prosecution in trial Court is that, victim, a 15 years old girl, while admitted in MGM Hospital for delivery, reported that, accused is her elder brother. That, since 2020, he had evil eye on her and he used to touch her inappropriately. That, in the month of December 2020 / January, 2021 in afternoon, while she was alone in the house, accused returned from his duty, and had forcible physical relations with her and issued threats to kill, if she informs to anyone. According to her, twice, thrice, he committed forcible sexual relations with her. In the month of July 2021, she experienced abdominal pain and therefore was taken to hospital and it was diagnosed that she was pregnant. On 25-08-2021, she delivered a male child and thereafter, she gave statement and sought action against her accused brother.

On registration of crime on the basis of above report, it was duly investigated by PW10 Investigating Officer and he, after completion of investigation, chargesheeted accused, who was tried vide above special case. Prosecution examined as many as ten witnesses and relied on documentary evidence like statement of victim Exhibit 22, spot panchanama Exhibit 25, requisitions letters for DNA sample kits, DNA report etc.

Trial was conducted and ultimately accused was found guilty

and accordingly, he stood convicted for above offence.

Precisely said conviction vide impugned Judgment and order is under challenge in this appeal.

SUBMISSIONS

On behalf of Appellant :

3. Learned counsel for appellant would point out that, prosecution has miserably failed to bring home the charges. According to him, there is false implication. He would submit that, there is no conclusive evidence on the point of age of victim. That, no ossification test was done. According to him, DNA report, though positive, is not conclusive evidence on the point of rape. He would submit that, there is delayed reporting and all such aspects are not correctly appreciated by the learned trial Court, which according him, has erred in convicting the accused and so he prays to set aside impugned Judgment and order by allowing the appeal.

On behalf of State and Victim :

4. Per contra, learned APP would submit that there is cogent, clinching and overwhelming evidence on the point of minority of victim and on the point of forcible rape i.e. from the testimony of victim herself, which according to learned APP, is inspiring confidence

and is of sterling quality. According to her, DNA report confirms applicant to be biological father of the baby born to victim and this itself according to her, seals the fate of prosecution case against the accused. For want of merits, she prays to dismiss the appeal.

5. Learned counsel for respondent No.2 victim also supported the Judgment of conviction passed by the learned trial Court and even according to her, there is conclusive evidence on the point of age as well as rape.

6. Re-appreciated the oral and documentary evidence.

SUM AND SUBSTANCE OF PROSECUTION EVIDENCE

7. In view of specific ground of learned counsel for appellant that there is no conclusive proof on the point of age, evidence is examined.

It is noticed that PW1 victim, in her evidence itself, has provided her date of birth as 23-09-2005 and she deposed that, she had studied upto 6th Standard and she also gave name of the School.

Prosecution has adduced evidence of PW8 Mrs.Dasharate, Headmistress and she has placed on record admission form Exhibit 67, attested copy of admissions register Exhibit 68 and attested copy of birth certificate Exhibit 69 / Art. "A".

In **cross-examination**, PW8 Headmistress answered that Art. "A" bears her endorsement.

On scrutiny of said documents, apparently, there is school Admission Form Exhibit 67 as well as extract of Admission Register Exhibit 68, which show that she was admitted in the school in Sr.Kg. wherein her date of birth is shown as 23-09-2005. At Exhibit 69 is the certified/attested copy of Birth Certificate issued by Municipal Corporation, Aurangabad, wherein her date of birth is given as 23-09-2005. Consequently, in the light of such oral and documentary evidence, there is no hesitation to hold that there is sufficient and conclusive evidence on the point of age of victim.

8. As usual crucial evidence is of victim and she is examined as **PW1**, who deposed at Exhibit 21. Gist and sum and substance of her evidence is that, her date of birth was 23-09-2005 and she to be residing with her parents and two brothers. She deposed that, accused was her elder brother and he worked as security guard. She took education up to 6th Standard. According to her, incidents in question took place during December 2020 to January 2021. Accused looked towards her with evil eye, he touched her with bad intention i.e. in absence of family members. That, one day, when he returned from duty, while she was alone at noon time, he caught her, pushed

her on a cot and in spite of her oppose and resistance, he beat her and had forcible physical relations with her after which he threatened to kill her. According to her, it happened twice thrice but because of threat, she did not inform to family members. That, in July 2021 she had abdominal pains and her mother took her to the hospital and after medical checkup, it was declared that she was pregnant. She claims that inspite of enquiry by her mother, out of threat and fear, she did not named accused brother and rather at his instance, named unknown boy from Bombay. She deposed that, she felt like committing suicide. That, on 25-08-2021 she was taken to hospital for delivery. At the time of discharge from hospital, on perusal of her Aadhar Card, hospital authorities realized that wrong name was supplied and they duly intimated Police, who came to hospital and recorded her statement during which she reported and named her brother. She deposed about showing spot to Police. Her sample for DNA were collected by the Doctor. Her statement being recorded before learned J.M.F.C. and she also identified her statement and spot panchanama.

There is extensive **cross-examination** and therefore, only relevant cross-examination is dealt with. Victim admitted that till she went to the hospital, she did not lodge complaint against her brother and that there was delay in lodging complaint, but she offered

explanation that on account of fear of her brother and as he had given threats, there was delay in lodging complaint. She admitted that date of birth is missing from complaint Exhibit 22. She denied that she was above 18 years of age. She denied that accused remained out of house during the period of October, November and December. She answered that she reported history of sexual assault at medical hospital which was noted in English but she narrated the same in Hindi. She also denied that there were no forcible physical relations by her brother and rather it were by relative in Mumbai. She also denied that she was not willing to give DNA sample for analysis.

9. Here, apart from evidence of PW1 victim herself, prosecution seems to have relied on scientific evidence i.e. DNA evidence.

PW3 Dr.Kharat seems to be the Medical Officer, who collected DNA samples of accused on 01-09-2021 for the purpose of analysis and he identified the requisition letters Exhibit 31 and 32 to that extent. He also identified accused in the Court, whose samples were taken.

Nothing adverse or damaging is brought in his **cross-examination**.

10. **PW4** Dr.Bakshi is the another Medical Officer to whom victim

was referred for collection of DNA samples and she deposed about receiving requisition letter from Police, examining the victim, noting history and on her consent, obtaining DNA samples. This witness has also narrated history given by victim about multiple forcible peno-vaginal intercourse by accused. She deposed that after collection of samples, the same were handed over to Police.

On studying her **cross-examination** nothing adverse seems to have been brought to disbelieve her above testimony.

11. **PW5** Dr.Varshney is the Medical Officer, who admitted, treated victim, who was admitted for delivery. He carried in the Court all original admission papers and OPD papers, which he identified in the Court. He deposed about abdominal pain of victim in full term of pregnancy. He deposed about victim delivering a baby on 25-08-2021.

Though this witness is **cross-examined**, nothing damaging to above extent is elucidated in the cross-examination.

12. **PW6** Dr.Kendre is yet another Medical Officer, who deposed about receiving requisition from Police station as well as child of 14 days being forwarded for collecting DNA sample and after completing formalities, she deposed that in presence of two other Doctors, sample

of child were collected in DNA kit and handed over in sealed condition to Police.

Nothing adverse is brought in her **cross-examination** to disbelieve her version.

13. **PW7** Palaskar is the Chemical Analyzer and DNA Expert, who in his evidence at Exhibit 55 deposed about receiving DNA samples and he narrated entire procedure of analysis undertaken by him in paragraph 4 and deposed about concluding and forming opinion that victim and accused to be biological parents of new born.

While under **cross-examination** he admitted that report does not bear signature of his colleagues. He answered that 3 DNA kits and 3 identification forms were demanded. He deposed that, after receipt of identification forms and DNA kits, it was learnt that samples were collected at GMCH, Aurangabad and he deposed to that extent on the basis of papers. Rest is all denial. DNA reports, which is issued by above witness, is at Exhibit 61 wherein opinion is issued that victim and accused are concluded as biological parents of new born.

14. **PW9** Sunita is the caretaker in Bhartiya Samaj Seva Kendra, who deposed that, child was taken for DNA sampling to Medical

Hospital Aurangabad by Police.

15. **PW10** Vandana Mule is Investigating Officer, who narrated all steps taken by her during investigation.

ANALYSIS AND CONCLUSION

16. On complete analysis and re-appreciation of evidence, here, it is apparent that victim and accused are brother and sister. Victim's evidence is indeed, as submitted by learned APP, of sterling quality. It is natural, convincing and worthy of credence. Though there is delay, there is explanation for delay by the victim herself that on account of fear and threat of her brother accused, she did not disclose the incidents that happened with her. She has categorically stated that initially accused, her elder brother, had evil eye on her and he used to touch her inappropriately. Then she categorically stated that he forcibly against her wish and inspite of her oppose, had physical relations with her by issuing threats to kill her and he thereby impregnated her. Scientific evidence i.e. DNA report confirms accused to be biological father of the baby born to victim. Medical experts are examined by prosecution, who have conducted delivery of victim, who have obtained medical samples of accused and victim and finally, the samples in sealed condition are shown to be handed over DNA

Expert, who is also examined and he has also narrated the entire procedure undertaken by him during analysis and above opinion and impression reached at upon analysis confirming accused and victim to be biological parents of the child.

Resultantly, there is indeed clinching, and overwhelming evidence regarding involvement of accused. No good ground being made out to interfere in a well reasoned judgment and order, appeal fails. Accordingly, following order is passed :

ORDER

- I) Criminal Appeal stands dismissed.
- II) Fees of the learned counsel appointed to represent respondent No.2, which is to be paid by the High Court Legal Services Sub-Committee, Aurangabad, is quantified at Rs.10,000/-.

[ABHAY S. WAGHWASE, J.]