



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.337 OF 2016

Sopan s/o Ananda Gaike
Age: 53 years, Occu.: Labour,
R/o. Mahalaxmi Hivre,
Taluka Newasa, District Ahmednagar.

.. Appellant

Versus

The State of Maharashtra

.. Respondent

...
Mr. S. L. Bhapkar, Advocate for the appellant.
Mr. V. V. Jahagirdar, APP for the respondent/State.
...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 05.10.2026

Pronounced on : 07.10.2026

JUDGMENT :-

1. In the instant appeal, there is challenge to the judgment and order dated 10.05.2016 passed by the learned District Judge-1 and Additional Sessions Judge, Newasa in Sessions Case No.40 of 2015, by which present appellant stood convicted for offence under Section 7 punishable under Section 8 of the Protection of Children from Sexual Offences Act [POCSO Act] and for offence under Section 354(A), 323, 506 of the Indian Penal Code [IPC].

BRIEF FACTS OF THE PROSECUTION CASE

2. In short, case of prosecution in Trial Court is that, victim, a 12 years old girl, who, in the company of her younger sister, had been to

collect grass in the field of one Gaike, at that time, accused came there, removed his pant, pressed victim's breast and asked victim to hold his male organ. He also threatened her to not to inform anyone and moreover, offered Rs.5/- to the younger sister of the victim. Both girls ran home and narrated the incident to their grandmother. Later on, victim accompanied her father and grandmother to the police station and there, grandmother PW2 set law into motion, resulting into registration of crime, which was investigated and accused came to be tried for above charge vide above Special Case, which ended up in conviction. Hence, the instant appeal.

BRIEF ACCOUNT OF EVIDENCE BEFORE THE TRIAL COURT

3. PW1 victim, who is examined at Exhibit-10, deposed that she is studying in 7th standard and she to be 12 years of age and then she narrated that when she and her sister had been to collect grass in the field of Gaike, accused came there, caught her, removed his pant, pressed her breast and asked her to hold his penis in her hand. He also offered Rs.5/- to her younger sister and threatened them not to inform the incident to anyone. Thereafter, she claims to have reported the incident to her grandmother and then to police, where her statement was recorded by police.

. The victim was extensively **cross-examined**, and the relevant

portion of her cross-examination is dealt with and discussed herein. In paragraph No.3 of her cross-examination, she admitted that her grandparents and her uncle reside separately. She stated that her grandmother stays at a distance of 200 feet from her house. She was then asked about the distance between the house of her uncle and the complainant. She was also asked about the occupation of her father. In paragraph No.5, she admitted that generally her mother looks after the cattle and not her grandparents. She further admitted that her mother arranges for fodder for the cattle. She was unable to give the exact date, month, and year of the incident, but stated that the incident had occurred eight months earlier. She admitted that she had not disclosed the date of the incident to the police. In paragraph No.8 of her cross-examination, she was asked about the field of Gaike, his house, and whether there was any canal water there. She was also asked about the entries in the revenue record regarding the sugarcane crop of Gaike. The learned Trial Court has taken note that irrelevant questions were asked to the victim and that the victim was mechanically admitting to all the suggestions put to her. To one of the questions, she admitted that there was no sugarcane crop in the field of Gaike. She then denied that she had not gone to the field of Gaike for cutting grass. She stated the height of the grass to be five feet. She again admitted that, on the day of the incident, her mother had taken

the cattle for grazing. In paragraph No.11 of her cross-examination, the defence case was put to her that there had been a quarrel 15 days prior to the incident on the issue of fetching water, which she denied. She was then asked about the children of the accused. She denied that she was falsely deposing.

4. **PW2** Grandmother, in paragraph No.2 of her examination-in-chief stated that, after she had meals with her grandchildren, they went to bring grass in the field of Gaike and after some time they both rushed and victim told her that accused caught hold of her chest and pressed it. Witness has clarified that the victim used to refer chest as “mummy” and other granddaughter told that accused offered Rs.5/- and thereafter, accused threatened to pushed them in a well. Witness deposed that she found both granddaughters in a frightened condition. She claims to have come across nail marks on one side and one side of the chest to be swollen. In paragraph No.3, she stated that, her son, daughter-in-law and other son were out of station for selling ropes. She also deposed that around 6 p.m. she informed the incident to the wife of accused and then deposed that as there was no other elder member in the house that day, so she could not do anything. On Friday, when her son and daughter-in-law came, she narrated the incident to them and thereafter, they visited police

station and she lodged the report, which she identified to be at Exhibit-17.

. In initial cross-examination, she is asked about vehicular traffic on the road. In paragraph No.6 of her cross-examination she admits that her husband sells brooms. In paragraph No.7 of her cross-examination, geographical directions of the roads and house are extracted from the witness. In paragraph No.8 of her cross-examination, details of her son and about his two children are sought. In paragraph No.9 of her cross-examination, she is asked about agricultural land of neighbour, the nature of crops taken therein and availability of water source. Similarly, in paragraph No.10 of her cross-examination, details are sought about land of one Palve, Tandale and whether they live in joint family. In paragraph No.11 of her cross-examination, she is asked about population of village, about Sarpanch and Police Patil. She admitted that except to the wife of accused and police, nobody was informed about the incident. She claims to have informed police about the date of incident, but she is unable to state why it is not appearing in her complaint. Rest is all denial, except admitting that at the time of complaint her nephew and brother were accompanying her and that both her sons had mobiles. Then she admitted to be present at the time of medical examination of the victim. Rest is again denial to all the suggestions.

5. **PW3** is panch to spot panchanama Exhibit-19 and ;
6. **PW4** is the Investigating Officer, who narrated all the steps taken by him during investigation.

SUBMISSIONS

On behalf of appellant/original accused :-

7. Pointing and referring to the above evidence, learned Counsel for the appellant would submit that there is apparently false implication. According to him, alleged occurrence is of 03.06.2015, but FIR is lodged after 3 days without plausible explanation and FIR being delayed one, he would submit that there is possibility of concocted and false story reported to police. Learned Counsel for the appellant pointed out that few days prior to the incident in question, there was quarrel on account of filling water and in that backdrop, there is false implication. According to him, such crucial aspects are not correctly appreciated by learned Trial Court.

8. According to learned Counsel for the appellant, there being charge under the provisions of POCSO Act, it was bounden duty of prosecution to prove the age of victim and her alleged minority. However, it is submitted that ,there is no conclusive proof on the point of age. It is pointed out that, victim has also not given her date

of birth, nor her grandmother/informant gave the date of birth. Thus, according to him, prosecution has failed to prove the minority of the victim and hence, he would submit that the charges of POCSO Act would not be attracted at all.

9. Learned Counsel for the appellant further pointed out that except the statement of victim and grandmother, there is no other convincing evidence. He would submit that, in fact, grandmother has hearsay information. Learned Counsel for the appellant further pointed out that neither the owner of the field where victim girl went in the company with her younger sister is examined, nor he is made to act as a panch to the spot panchanama. Learned Counsel for the appellant also pointed out that very younger sister of victim is also surprisingly not examined by the prosecution. According to him, the younger sister of the victim was crucial and direct eye witness to the occurrence, but said witness is withheld by the prosecution.

10. He would submit that the informant/grandmother claims that there were nail injuries on the breast of the victim and that it was swollen. However, there is no supportive or corroborative medical evidence. The medical expert, who examined the victim, has also not been examined before the Court, though the injury certificate is forming part of the charge-sheet. The said certificate is silent in this

regard. Thus, according to him, the informant/grandmother has exaggerated her version and is unworthy of credence.

11. Criticizing the spot panchanama, it is submitted that, witness to spot panchanama is from distinct village. In fact, local panchas are expected to be engaged for spot panchanama, but prosecution engaged relative of complainant as spot panch. Even 7/12 extract of the land spot is silent about any sugarcane crop and, therefore, he questions the very story of prosecution about victim going for cutting grass in the sugarcane field and there she molested. Learned Counsel for the appellant further pointed out that even victim in her cross-examination has admitted that there is no sugarcane crop standing in the land. Resultantly, learned Counsel for the appellant doubts the story of prosecution about any occurrence.

12. For all above reasons, attributing improper appreciation of evidence and law at the hands of Trial Court, he prays to set aside the impugned judgment and order by allowing the appeal. He seeks reliance on the following judgments of the Hon'ble Apex Court as well as the High Courts :-

- (i) **P. Yuvaprakash v. State Represented by Inspector of Police, (2024) 17 SCC 684,**

- (ii) Deepak vs. State of Govt. of NCT Delhi, MANU/SC/1038/2026,
- (iii) Santosh Marandi v. The State of Bihar and Ors., MANU/BH/0279/ 2025,
- (iv) Akbar Hussain v. State of Maharashtra and Ors., MANU/MH/8564/2025
- (v) The State of Uttar Pradesh v. Anurudh and Ors., MANU/SC/0045/2026

On behalf of respondent/State :-

13. In answer to the above, the learned APP supports the judgment and order of conviction by submitting that the sole testimony of the victim inspires confidence and that her testimony has remained intact. Therefore, according to him, the learned Trial Court has rightly relied upon her testimony. He submits that there is an explanation for the delay in reporting the incident, though, according to him, such delay in cases of this nature is of not much significance. He would submit that the grandmother set the law into motion and was duly informed immediately after the incident. Even her evidence has remained unshaken on the core point of the prosecution case.

ANALYSIS AND CONCLUSION

14. Carefully analysed the evidence of the victim PW1 and her grandmother PW2. Before the victim was examined, she was

questioned by the learned Trial Court about the standard in which she was studying and her age. She stated that she was studying in the 7th standard and was 12 years of age. Indeed, as submitted, neither the victim nor her grandmother gave the date of birth of the victim, nor does it appear that the investigating machinery collected any birth certificate or school record to establish the age of the victim and that she was a minor. However, even in the absence of conclusive documentary proof regarding her age, having regard to the standard in which she was studying, under any circumstances, she could not have been above 18 years of age and, therefore, the provisions of the POCSO Act would get attracted. Having put to rest the controversy regarding the minority of the victim, it is further required to be seen whether the prosecution has proved the charges beyond reasonable doubt.

15. Here, prosecution claims that PW1 victim, when had been to collect grass with her elder sister, accused molested her, as stated in the examination-in-chief of the victim. Victim has rushed home and promptly reported the incident to her grandmother, who was all alone at home, as both parents of victim were out of station. PW2 Informant has deposed that she even informed wife of accused, but as there was no other elder members in the house on that day she deposed that she

could do nothing and on Friday, when her son and daughter-in-law came, she reported them and then they went to police station. Therefore, the delay of 3 days is explained by the informant. Even otherwise, in cases of such nature, delay, if any, is not significant and cannot be given undue importance when there is otherwise convincing evidence. Resultantly, this Court, for above reasons, finds no force in the submission of learned Counsel for the appellant that there is delay in reporting and consequently, there to be false implication.

16. On the point of actual sexual assault/molestation, one has to obviously fall back and lean primarily on the testimony of victim. Here, the victim has categorically stated that she went with her younger sister to the field of Gaike to collect the grass and there, accused pressed her breast, removed his pants and asked victim to hold his male organ. She has deposed that he offered Rs.5/- to her younger sister and also threatened to not to inform anyone.

17. Though victim is subjected to extensive cross-examination, on the point of actual occurrence, there is no serious cross-examination on the point of molestation. Questions are posed about separate residence of grandparents and uncle, distance of their house, elder sister's education, her occupation, house of Gaike. Though victim

answered that her mother took care of the cattle and that she used to arrange fodder for the cattle, it is to be noted that on that day mother was out of station and therefore, it was obvious for victim to go to collect grass from the field of Gaike, which is in the neighbourhood. Much stress is laid by learned Counsel for appellant on the point that victim has admitted that there was no sugarcane crop standing in the field of Gaike and even 7/12 extract to be silent on that point. It is to be noted that victim had been to collect grass and not sugarcane crop and therefore, above ground has no force. In paragraph No.9 of the cross-examination, the victim has flatly denied that it was incorrect to state that she and her sister gone to the field of Gaike. In fact, by questioning her about the height of the crop, defence has endorsed and confirmed the story of prosecution about victim going to the field that day. In paragraph No.11, case of defence, is tried to be posed about false implication in the backdrop of quarrel, but victim has flatly denied that due to some reason, a quarrel had taken place between her mother, sister and accused and his wife. Resultantly, in the considered opinion of this Court, there is no reason to doubt the testimony of the victim. Mere failure of prosecution to examine her younger sister is no good ground to doubt her testimony, which is otherwise inspiring confidence.

18. Here, PW2 grandmother, who has set law into motion, was the only elderly member available in house and this witness has stated that her granddaughters after taking meals had been to bring grass and they had rushed home in frightened condition and victim granddaughter narrated the act of accused. Though this witness stated that she had noticed injury marks on the chest and one side of the chest to be swollen and even if it is considered as an exaggerated version, that itself will not overshadow the victim's testimony, who, in clear terms, has narrated the act of accused and her testimony to that extent has remained unshaken in spite of facing cross-examination.

. Even informant PW2 is subjected to extensive cross-examination, but her above testimony of core prosecution case has not been disturbed. Resultantly, there is corroborative evidence of grandmother, to whom the occurrence was immediately reported and this witness also claims to have duly passed on the information of the incident to very wife of the accused. This seems to be the natural evidence of PW2.

19. The learned Counsel for the appellant would strenuously submit that the injury certificate forms part of the charge-sheet and is silent about any injury, and that the medical expert who issued the certificate has not been examined. However, even if there is a failure

to examine the medical expert, considering the nature of the allegations of molestation, which have been clearly narrated by the victim, such lacuna cannot be held to be fatal to or damaging to the prosecution case. What is crucial here is the credibility of victim's testimony. This Court does not find any reason to doubt her testimony, which is otherwise found to be natural.

20. Similarly, engaging panch witness from other village and not the owner of the field, also cannot be said to be fatal to the prosecution. Panch has categorically stated that he acted as a panch to the spot, which was shown by victim and it was the land where sugarcane crops were standing and at the spot, some dry grass to be lying. There is reference to that extent in the panchanama Exhibit-19. In fact, this witness deposed about coming across dry grass lying there. Therefore, there is every possibility that victim went to collect the same for the cattle. Therefore, even above objection to the spot panchanama is of no much significance.

21. Learned Counsel for the appellant has relied on above referred judgments. In the case of **P. Yuvaprakash** (supra), Hon'ble Apex Court has noted several variances in the statement of victim, her Statement under Section 164 of the Code of Criminal Procedure and that, there was no penetrative sexual assault. Here, though statement of victim

is not exhibited by confronting it to the victim, as submitted by learned Counsel for appellant, it is shown to be part of charge-sheet. However, on carefully going through the same, though it is submitted that the victim, in her statement under Section 164 of the Code of Criminal Procedure, has not stated about accused asking her to hold his penis, it is clearly and categorically appearing in the said statement to that extent. Hence, it cannot be said that testimony of victim is in variance to Section 164 of the Code of Criminal Procedure.

In rest of the cases i.e. **Deepak v. State Govt. of NCT Delhi** (supra), **Santosh Marandi** (supra), **Akbar Hussain** (supra) and **State of U.P. vs. Anurudh** (supra), the facts are clearly distinguishable.

22. Resultantly, on complete re-appreciation of evidence, even this Court is of the opinion that testimony of victim need not be doubted. There is plausible reason for delay in reporting. Defence of accused has not been probalilized. Hence, there being no illegality or perversity in the impugned judgment and order, learned Trial Court committed no error in accepting the case of prosecution. Hence, the following order is passed :-

ORDER

. The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

Later on :

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

14. Considering the above request made by learned Counsel for the appellant, though learned APP opposes for the same, six weeks time is granted to the appellant to surrender.

[ABHAY S. WAGHWASE, J.]

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