



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

CRIMINAL APPEAL NO. 414 OF 2025

Balaji s/o Madhavrao Whande,
Age : 31 years, Occupation : Labour,
R/o. Tuppa,
Taluka and District Nanded.

... Appellant
(Ori. Accused)

Versus

1. The State of Maharashtra,
Through Police Station, Nanded (Gramin),
District Nanded.
2. X – Prosecutrix

... Respondents

.....
Ms. Madhuri B. Jain, Advocate for the Appellant.
Mr. V. V. Jahagirdar, APP for Respondent No.1-State.
Mr. R. K. Khandelwal, Advocate for Respondent No.2 (appointed)
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 28-08-2026
Pronounced on : 29-08-2026

JUDGMENT :

1. Appellant, a convict hereby challenges judgment and order dated 23-04-2025 passed by learned Sessions Judge, Nanded in Special (POCSO) Case No.154 of 2023, by which his conviction is recorded for offence under Sections 4, 6, 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

BRIEF FACTS OF CASE

2. Prosecution was launched against appellant on report lodged by mother of victim, aged 28 years, that on 20-09-2023, on the pretext of offering idol, accused took her daughter to his house, closed the door, made her sleep, removed her undergarment and inserted his fingers and thereafter, he licked her private part. Victim came home and reported incident to her mother and grandmother and she was duly taken to the Police Station, where she lodged report exh.19 resulting into registration of crime bearing No.680 of 2023, which was duly investigated by PW8 Investigating Officer. After completion of investigation, accused, who was arrested, came to be tried vide Special (POCSO) Case No.154 of 2023 and trial culminated into conviction. Hence, instant appeal by accused convict.

SUBMISSIONS**On behalf of Appellant :**

3. Learned counsel for appellant would point out that, there is false implication. She questions prosecution story on the point of age of victim and according to her, the same is not conclusively proved. According to her, though birth certificate from local body is placed on record, Gram Panchayat authority is not examined. Moreover, she pointed out that, considering the date of birth reflected in said birth

certificate exh.18 and going by date of its registration, according to her, it is apparently clear that registration is shown to be done surprisingly even prior to the very birth and therefore, she questions the reliability of said document.

4. Taking this Court through the victim's evidence, learned counsel would submit that, witness has deposed that, she has tutored and therefore, child testimony is unworthy of credence.

5. Further according to her, deposition of informant mother is not in consonance with her statement recorded under Section 183 of the BNNS. Further according to her, only interested witnesses are examined and no independent witness or any neighbour is examined. That, there are several lapses and lacune in investigation and consequently, she submits that, learned trial Court ought not to have accepted story of prosecution.

6. According to her, alleged occurrence is of 20-09-2023 but spot panchanama is drawn on 21-09-2023. That, seizure panchanama was shown to be drawn between 11:00 a.m. to 11:30 a.m., but spot panchanama carries time as 11:10 a.m. to 11:40 a.m., resultantly there is overlapping of timing and therefore, it is her submission, that Investigating Officer cannot remain present at two distinct places at

one and the same time and so, such documentary evidence of prosecution ought not to have been relied by learned trial Court.

7. She next submitted that testimonies of witnesses are full of material omissions and improvements rendering the case of prosecution story doubtful.

8. Lastly, she submitted that, even medical evidence or scientific evidence does not support prosecution as no signs of said act are reflected in the medical expert's evidence and even clothes on the person of victim at the time of incident were not gathered. Consequently, for above reasons, she seeks indulgence of this Court in setting aside impugned judgment by allowing the appeal. She seeks reliance on the judgment of the Hon'ble Supreme Court passed in Criminal Appeal arising out of SLP (Crl) No.10377 of 2025 in the case of *Laxman Jangde v. State of Chhatisgarh through the Station House Officer*, judgment dated 04-10-2023 passed by the Hon'ble High Court of Sikkim : Gangtok, in the case of *Santa Kumar Rai v. State of Sikkim* and judgment of this Court (Nagpur Bench) passed in Criminal Appeal No.258 of 2022 in the case of *Mahadeo @ Mahadya Uttam Gonde v. The State of Maharashtra and Another*.

On behalf of State and Victim :

9. In answer to above, learned APP as well as learned counsel for victim both submit that, charges against accused are cogently proved. That, victim is proved to be a “minor” and there is reliable and trustworthy evidence in the form of very birth certificate. That, victim had immediately reported her mother, who also promptly lodged complaint. That, victim was subjected to physical and medical examination. That, medical expert, who noted fresh injuries, has deposed to that extent in the learned trial court. Consequently, as charges are duly proved, they both support the judgment and pray to dismiss appeal for want of merits.

ANALYSIS

10. Re-appreciated and meticulously analyzed the evidence. In support of above case of prosecution, though as many as eight witnesses are examined, relevant evidence is that of PW2 victim, her mother PW1 informant, PW3 medical expert, in support of accusations and evidence on the point of age of victim as there is offence under the provisions of the POCSO Act.

There being offence under the provisions of POCSO Act, it is to be seen whether prosecution has substantiated that victim was a “minor”.

PW1 mother of victim, in her evidence at exh.17, stated that, at the time of incident, her daughter was 6 years old and was studying in 1st Standard. She tendered in the Court original birth certificate exh.18. **PW2** Victim also deposed that, she was studying in 1st Standard. Investigating machinery has gathered birth certificate and the same was duly exhibited before the court as exh.18 wherein date of birth of victim is given as 04-05-2017.

Learned counsel for appellant questions above birth certificate on two counts that firstly, authority, who issued it, has not examined and secondly, there is mismatch between date of birth and date of registration.

Firstly, PW1 mother of victim has placed on record original birth certificate exh.18. She is the rightful custodian of the said document in the capacity of mother. Mere, failure of prosecution to examine authority, who issued birth certificate, would not be sufficient to cast doubt on the credibility of said certificate, moreover, it is a public document and therefore, can definitely be relied when it is submitted by very biological mother.

As regards to second ground of challenge about mismatch between date of birth and date of registration is concerned, as rightly pointed out, the date of birth is 04-05-2017 but what date 19-01-2017 refer is mere registration of pregnancy. Hence, there does not seem

to be any force in the above grounds challenging the evidence on the point of age. On the contrary, going by any standards, victim is definitely a “minor” following in the definition of “child” as below 18 years of age. PW1 Mother of victim and PW2 victim both speak about victim studying in 1st standard at the time of incident. Having put issue of age rests, let us see whether prosecution has proved other charges by adducing cogent, convincing and legally acceptable evidence.

11. Here, there is conviction under Sections 4, 6 and 8 of the POCSO Act. Sections 4, 6 and 8 are reproduced below for ready reference :

“4. Punishment for penetrative sexual assault.— [(1)] Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than [ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

[(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

[6. Punishment for aggravated penetrative sexual assault.—(1) Whoever commits aggravated penetrative sexual assault shall be

punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

8. Punishment for sexual assault.—*Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.”*

12. On this count evidence of **PW2** victim is crucial. Visited the same, which is at exh.25. In paragraph 2 of the examination-in-chief, victim deposed that, after she returned from school, after asking her mother where was the small Lord Ganpati idol, and hearing from her mother that small Lord Ganpati is near big Lord Ganpati, she went towards big Lord Ganpati. Accused, friend of her father, came there, lifted her saying that he will give her small Ganpati and took her to his house, initially offered her almonds, made her sleep on the cot, he removed her undergarment. She deposed that, he inserted finger in her private part and she shouted out of pain i.e. pains due to his nails. She deposed that, she asked him to leave her after which accused opened the door and she returned home and told the incident to her mother.

Victim is subjected to **cross-examination**. Only relevant cross is

dealt here. She denied that, she gave statement to Police as per say of her mother and her mother told her what to state. She answered that, she signed at Police Station on the say of her mother and it was a blank paper and over it her father and mother gives two signatures. She gave location of house of accused to be at a little distance from the Ganpati Temple. She answered that, she shouted when he took her towards his house and further answered that, no person was coming over the road that time. She is unable to give full name of accused. She deposed that, her statement was recorded at home as well as in Police Station that too on the same day.

13. **PW1** is the mother of PW2 victim and she in her evidence at exh.17 deposed on the point of occurrence in paragraph 2 that, her daughter went to school and returned home at 01:30 p.m. At around 02:00 p.m., victim went to play at the Sarvajanik Ganesh Mandal of their village and she and her mother were doing household work. After some time, victim returned home crying and on being enquired, she reported that, accused picked her, took her to his house on the pretext of giving small Ganpati idol, he closed the door of the house, made her sleep on the cot, removed her nicker, inserted his fingers in her private part and the nails of the accused were causing pain to her. Victim also told that, accused licked her private part and told her not

to inform to anyone. Therefore, they approached Police Station.

She too has faced **cross-examination** wherein she answered that, she did not witness the incident, that her daughter returned home from school at around 01:30 p.m. She is questioned about the distance between the Ganesh Mandal and her house, nature of the road which goes to it, about her husband. She admitted that, no person in village saw accused taking her daughter and she did not go to the place of incident and that she is unable to give Gram Panchayat House number of the place where incident took place. In paragraph 10, there is denial of all suggestions about what she learnt from her daughter. In paragraph 11, there is cross examination on the point of clothes and its place of purchase, questions about parents of accused and thereafter, suggestions are put which is precisely the defence of accused and which is denied by her that, she had given Rs.50,000/- to accused and as accused was not returning it, there was false implication. In paragraph 12, there are questions about acquaintances and relations of her husband and she denied that they had accompanied her to Police Station.

Thus, PW1 mother's evidence, who learnt about incident from her victim daughter, has apparently corroborated victim's testimony. Nothing adverse is brought in the cross-examination so as to disbelieve her.

14. Prosecution has also examined another child as **PW5** who in his evidence at exh.43 deposed that, during the festival of Lord Ganpati, on that day at 02:00 in the afternoon, victim was standing near Ganapati and eating oranges and at that time, he saw accused came and take away victim to his house.

While under **cross-examination**, he admitted that, he did not inform police about there to be Ganpati festival in their lane nor he told his parents or uncle about accused picking victim. He denied that victim's father told him what to depose in the Court.

15. Prosecution has examined **PW3** Dr.Sharadkumar, medical expert at exh.32, who had occasion to examine the victim and in paragraph 3 of examination-in-chief, he gave age of the victim, in paragraph 4, he noted the history and deposed about surface injury found on the person of victim. In paragraph 5, it is deposed that, on local examination, there was redness present with minimal abrasion near Labia Minora with hymenal injury, there was no bleeding, but hymenal injury was old one. Doctor's opinion is reflected in paragraph 6 about sexual intercourse.

While under **cross-examination**, witness admitted that, he did not conduct ossification test and admitted that bleeding can be there

if a 35 years' man inserts fingers forcibly into the vagina. Rest is all denial. Medical report issued by him is identified at exh.33.

16. I have gone through the citations relied by the learned counsel for the appellant, however, the facts in those cases and the case in hand are quite distinguishable.

CONCLUSION

17. Therefore, on complete analysis of above evidence, here, it is emerging that before the trial Court prosecution indeed succeeded in proving that at the time of incident, victim was a “minor” studying in 1st Standard. There is conclusive proof on the point of age of the victim i.e. in the form of birth certificate. Regarding commission of offence of penetrative sexual assault, there is evidence of victim, her mother and medical expert, which has remained intact. Nothing adverse has been brought before this Court to doubt their testimonies. Defence of implication in the backdrop of money transaction is not attempted to be probabilized.

Consequently, findings and conclusion reached at by learned trial Court cannot be said to be perverse so as to interfere. Accordingly, following order is passed :

ORDER

- I. Criminal Appeal is 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.]