



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.850 OF 2025
WITH
CRIMINAL APPLICATION NO.3667 OF 2026
IN APEAL/850/2025

Sanjay s/o Shivaji Gangthade
Age: 28 years, Occu.: Agriculture,
R/o. Mulaj, Taluka Omerga,
District Osmanabad.

.. Appellant

Versus

1. The State of Maharashtra

2. X. Y. Z.

.. Respondents

...
Mr. Nilesh S. Ghanekar, Advocate for the appellant.
Mr. N. D. Raje, APP for respondent No.1/State.
Mr. Yogesh Bolkar, Advocate for respondent No.2.
...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.10.2026

Pronounced on : 13.10.2026

JUDGMENT :-

1. Appellant herein, a convict, challenges the judgment and order of conviction dated 30.01.2024 passed by the learned Additional Sessions Judge, Omerga in Special POCOS Case No.24 of 2022 holding him guilty for offence under Sections 376, 342, 452, 506 of the Indian Penal Code [IPC] and under Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act [POCSO Act].

BRIEF FACTS OF THE PROSECUTION CASE

2. Mother of the victim set law into motion on 10.09.2022 reporting that on said day, she and her husband had proceeded to the field at around 3.30 p.m., while their minor daughter was all alone in the house. After they crossed 1 kilometer distance, there were rains and so they returned back home and found door lock and as such, she called her daughter and asked her to open the door. Her daughter opened the door in frightened condition. Accused was seen sitting on the cot. On being asked, her daughter informed her that accused entered the house, closed the door and had forceful sexual intercourse with her. On above report, crime was registered and finally investigated by PW10, who after gathering evidence, charge-sheeted accused, who was ultimately tried vide above Sessions Case and also held guilty. Hence, the appeal.

SUBMISSIONS**On behalf of appellant/accused :-**

3. Learned Counsel for the appellant would plead innocence and alleged false implication. According to him, at the first count, there is no cogent evidence on the point of minority of the victim. He would submit that school extract placed on record is of 4th standard and as such, there is no documentary proof in the form of birth certificate.

Thus, according to him, there is no conclusive proof on the point of age so as to invoke provisions of the POCSO Act.

4. He would next submit that there is no corroboration to the testimony of the victim. There was false information passed on to the mother, who, in turn, lodged false report. Learned Counsel for the appellant very emphatically submit that here none other than the father of the victim has been examined, who step in the witness box to state that on account of allergy suffered by his daughter, she was taken to the hospital. That, such evidence has not been appreciated by the learned trial Court.

5. He would take this Court through the medical evidence and would submit that doctor has mere expressed possibility of sexual assault and doctor was not certain. Thus, according to him, there is no medical corroboration.

. For all above reasons, he questions the maintainability of judgment and order and prays to allow the appeal by setting aside the impugned judgment and order.

On behalf of respondent/State :-

6. Per contra, learned APP as well as learned Counsel for the victim would justify the judgment and order of conviction. They

pointed out that there is conclusive proof on the point of minority of victim in the backdrop of testimony of PW7 Headmaster. That, very victim's testimony is inspiring confidence and the same has remained unshaken. No omissions and contradictions are brought on record. Lastly, learned Counsel for respondent No.2/victim would submit that learned Trial Court has not granted compensation and in the light of judgment of the Hon'ble Apex Court in the case of ***Bhanei Prasad alias Raju vs. State of Himachal Pradesh***, 2025 OnLine SC 1636, he urges to grant compensation.

EVIDENCE BEFORE THE TRIAL COURT AND ITS ANALYSIS

7. In the light of above submissions, evidence is put to minute scrutiny. Here, following witnesses are examined on behalf of prosecution :-

. **PW1** is the medical expert, who examined accused, **PW2** is the medical expert, who examined victim, **PW3** is the informant mother; **PW4** is the victim, **PW5**, **PW6** and **PW8** are panchas, **PW7** is the Headmaster, **PW9** is the videographer, who videographed the exercise of recording of statement of victim, **PW10** is the Investigating Officer and **PW11** is the panch to spot.

. Defence has also adduced evidence of DW1 - father of victim.

8. Analyzed the above evidence. In the light of charge, obviously evidence of victim **PW4** followed by informant/mother **PW3** is crucial. However, as there is objection to the very age of the victim, this issue is dealt at the threshold.

9. The Victim, in her evidence, has gave her age as 15 years, her mother PW3 also gave age of the victim as 15 years in the FIR. PW7, the Headmaster of the school in which the victim was allegedly studying, is examined at Exhibit-43, seems to have carried original general admission register maintained by the school. In his substantive evidence, he has stated that name of entry of victim is at Serial No.1341 and that she had taken admission in 1st standard. Her date of birth was 09.12.2007. Therefore, with such quality of evidence, the objection on the point of age has no substance. There is school record, where victim was studying in 1st standard and it being valid on the point of age, there is no hesitation to hold that prosecution has discharged the burden of proving minority of the victim. Now, having put the issue of age to rest, it is to be further seen whether prosecution has at all proved the offence allegedly committed by accused.

10. **PW4** Victim, in her evidence at Exhibit-30, in paragraph No.1 of her examination-in-chief, stated that she knew accused, who resided

opposite to her house and who worked at Pune and that he had come for Ganpati festival to the village. In paragraph No.2 of the examination-in-chief, she deposed that, around 4 p.m. on 10.09.2022, her parents had left to go to the field and she was alone and studying. Accused entered her house, initially sat on the cot and then he expressed his love for her, after which he closed the door and she claims that he forcibly removed her clothes and had forcible sexual relations with her and issued threats to kill. That time, there was knock on the door and she opened it and found her parents on the door and she reported her parents the incident with her and thereafter, she narrated accompanying them to police, giving statement and facing the medical examination.

. While under **cross-examination**, she was questioned as since when she knew accused. She denied being prompted to give statement before the lower Court as well as to the medical expert. She also denied that she was falsely deposing. So much is the only cross-examination of victim. Thus, there is no serious challenge to the act of accused entering in the house and forcing him on her and committing rape.

11. Another crucial witness is **PW3** mother. She is examined at Exhibit-27, wherein she gave date of birth of the victim, the class in

which she studied, and stated that on 10.09.2022 around 3.30 to 4.00 p.m., they had proceeded towards the field, while their daughter was all alone in the house. She deposed that they traveled for a kilometer or so, but due to sudden rains they returned home and found the door closed and after giving call, daughter opened the door and accused was seen sitting on the cot and she claims to have questioned the daughter, who allegedly reported her the incident and thereafter, they approached police.

. Mother is also extensively **crossed-examined**. The cross-examination does not seem to be on relevant issues, as she is questioned about running shop, knowing persons named in the cross-examination. In paragraph No.7 of her cross-examination, an attempt is made to show that victim was purchased from a person for Rs.10,000/-, which she denied and she also denied that victim was not her biological child. Suggestions of her relations with another person and that daughter indulged in flesh trade are all flatly denied.

12. Thus, here, mother's evidence has remained intact on the point of incident immediately heard by her from her own daughter. She lend support to her daughter's version.

13. **PW2** is the medical expert, who examined victim. He, in his evidence at Exhibit-21, in paragraph No.2 of his examination-in-chief

narrated the history of sexual assault and on the same day victim being brought for medical examination. He deposed about noting contusion injury on the right breast admeasuring about 7 x 5 cm and on internal examination of genitals, he reproduced following injuries :-

- I. Abrasion on vaginal orifice admeasuring about 0.5 x 0.5 cm anterior aspect, margins were regular, reddish in colour.
- II. Abrasion over vaginal orifice admeasuring about 0.5 x 0.5 cm. Posterior aspect, margins were regular, reddish in colour.
- III. Similarly, I found Libia minora congested erythemadoul.
- IV. Hymen was teared at about 12.00 clock and 6.00 O'clock.
- V. Hymen tear was found at 9'O clock position which is marked in diagrammatic representation."

. He further deposed about collecting necessary samples for analysis including DNA sample and on the basis of medical examination, he claims to have opined that possibility of sexual assault cannot be ruled out.

. In cross-examination, medical expert admitted that he did not conduct age determination examination. He denied not taking consent of the victim. He admitted not mentioning whether there

were stains on the clothes of victim or not. He admitted that in case of allergy and rubbing of private parts aforesaid injuries were possible, but he added that it is rare. Rest is all denial.

14. Thus, medical expert has categorically deposed about noticing both external as well as injuries to the genitals. He has come across hymen to be torn. Consequently, medical expert confirms and endorses the act of rape.

15. Rest of the witnesses are panchas, videographer and Investigating Officer.

16. Learned Counsel for the appellant would submit that the accused has adduced the evidence of victim's father as DW1 at Exhibit-69. However, on carefully going through his evidence, more particularly, the tenor of his cross-examination, it is evident that he has admitted having heard from his daughter that, while she was alone at home after this witness and his wife had gone to the field, the accused entered their house and had forcible sexual relations with her. Consequently, though the defence has examined this witness, he has confirmed and endorsed the prosecution story.

17. As regards the objection regarding absence of corroboration is concerned, it would be profitable to refer to the judgment of the

Hon'ble Apex Court in the case of ***Krishan Lal v. State of Haryana, (1980) 3 SCC 159***, wherein the observations made in ***Rameshwar v. State of Rajasthan, AIR 1952 SC 54***, regarding the rule of prudence and the necessity of corroboration were reiterated, as follows :

“The tender years of child, coupled with other circumstances appearing in the case, such, for example as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed, to stand.

It would be impossible, indeed it would be dangerous to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with circumstances of each case and also according to the particular circumstances of the offence charged.”

18. In the light of above referred judgment as well as when victim's evidence inspires confidence, the prosecution case deserves to be accepted.

19. Learned Counsel for respondent No. 2/victim would submit that no compensation has been granted to the victim and places

reliance on *Bhanei Prasad alias Raju* (supra). However, the operative part of the judgment shows that the learned Trial Court has taken care to award compensation to be paid out of the fine by invoking Section 357(1) of the Code of Criminal Procedure. Even otherwise, in cases of rape, more particularly, where the victim is a minor, there is machinery and mechanism to provide compensation to the victim after registration of the FIR itself. This Court is of the view that compensation under the special scheme of *Manodhairya*, which is mandatory, must have been granted to the victim.

CONCLUSION

20. Perused the judgment under challenge. It is noticed that learned Trial Court has touched each and every aspect about prosecution case as well as defence case. It is a well reasoned judgment, which needs no interference. Hence, the following order is passed :-

ORDER

- I. Criminal Appeal stands dismissed.
- II. In view of dismissal of appeal, Criminal Application No.3667 of 2026 also stands disposed of.

[ABHAY S. WAGHWASE, J.]