



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

CRIMINAL APPEAL NO. 708 OF 2024

Prakash Baburao Kaduskar

Age: 41 years, Occu.: At present Nil,

R/o. Dongarwadi, Tq.Parner,

District Ahmednagar.

....Appellant

(Orig. Accused)

Versus

1. The State of Maharashtra
Through Parner Police Station,
Ahmednagar.

2. XYZ

.....Respondents

.....

Mr.Shashikant E.Shekade and Mr.Akash R.Kaware, Advocate for
Appellant.

Mr.G.O.Wattamwar, APP for Respondent No.1.

Ms.Smita Kasture, Advocate for Respondent No.2 (appointed).

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19 AUGUST, 2026

PRONOUNCED ON : 20 AUGUST, 2026

JUDGMENT :

1. Appellant, a convict for offence under Sections 354, 376(2)(i)(j) (n), 376(3), 506(2) of the Indian Penal Code (IPC) and under Sections 4, 6, 8 of the Protection of Children from Sexual Offences Act (POCSO Act), impinges judgment and order dated 06-05-2024, passed by learned Extra Joint District Judge and Additional Sessions

Judge, Ahmednagar, in Special Case No.194 of 2022.

BRIEF FACTS OF THE CASE

2. Prosecution was launched against present appellant on accusations that, he in the capacity of friend of father of victim/informant and also as a neighbour, used to visit informant's house, offer her snacks and food packets and expressed his likes for her. He also moved his hand over her body after offering her food packets. He also visited the house in absence of father of informant. That, in May, 2022, accused called her beside a lake and victim went as she would get food packets, but there, he made her lie down and had sexual intercourse with her. Thereafter, he asked her to come at said spot whenever he called and threatened to kill her father, if she informs anyone. That, out of fear, victim did not report incident to anyone. That, on 13-07-2022, he called her again near the lake and he raped her inspite of her resistance. This time, she returned home and reported her parents, who took her to the Police where she lodged report resulting into registration of Crime bearing No.602 of 2022 for above offences.

After completion of investigation, accused was tried vide above special case and on appreciating the oral and documentary evidence,

learned trial Court accepted the case of prosecution as proved beyond reasonable doubt and accordingly, convicted the accused. Hence, instant appeal.

SUBMISSIONS

On behalf of Appellant/Accused :

3. Learned counsel for appellant would question the judgment and order of conviction on the ground of false implication. According to him, at the first count, prosecution was failed to prove that victim was a “minor”. He would submit that, there is no cogent, reliable, conclusive proof on the point of age of victim so as to attract provisions of the POCSO Act. He pointed out that, though girl studied upto 10th Standard, prosecution did not examine any school authorities and rather witness, who is a Gramsevak is examined. But according to him, there is no proof of the very source on the basis of which certificate is issued by Gram Panchayat. According to him, in view of judgment of Hon’ble Apex Court in the case of *Satpal Singh v. State of Haryana, (2010) 8 SCC 714*, said certificate cannot be said to be conclusive proof of date of birth as according to him, who gave the exact information of date of birth has not come on record. He pointed out that, the lady who was Arogya Sevika, who allegedly

passed information of birth of victim, was not examined by prosecution as a witness. He would assert that, in fact in absence of conclusive proof of date of birth, learned trial Court ought not to have held victim to be below 16 years of age.

4. He next submitted that, as there is variance in the deposition before the learned trial Court and in statement of victim before learned Magistrate, testimony of victim is not credible and worthy of credence.

5. He also pointed out that, there is 18 days delay in lodging report, which is not explained and therefore, it was fatal for prosecution. It is his submission that, from the testimony of victim, it is clear that she has been tutored and she accordingly deposed.

6. Taking the Court through the operative part of the judgment, he would submit that conviction recorded under Section 376(2)(i) is already repealed on 21-04-2018 itself and therefore, on such count also judgment and order of conviction cannot be allowed to be sustained. Even according to him, there is no evidence to show that victim was below 16 years of age.

7. Lastly, he pointed out that, prosecution failed to connect accused with the offence as Chemical Analyzer (CA) report was not corroborating. On all above counts, he urges to set aside the impugned judgment of conviction by allowing the appeal.

In support of his submissions, learned counsel for the appellant relied on the following Judgments of the Hon'ble Apex Court.

- a) *Ravinder Singh Gorkhi v. State of U.P.*, (2006) 5 SCC 584.
- b) *Mahadeo s/o Kerba Maske v. State of Maharashtra and Another*, (2013) 14 SCC 637.
- c) *Ashok s/o Ramlakshtra Tiwari v. State of Maharashtra*, 2017 SCC OnLine Bom.9049.
- d) *Amol v. State of Maharashtra*, 2022 SCC OnLine Bom.107.
- e) *Prashant s/o Daulat Karwate v. State of Maharashtra*, 2018 SCC OnLine Bom.519.
- f) *Sandeep Janaji Konde v. State of Maharashtra*, 2015 SCC OnLine Bom. 6218.
- g) *Dnyaneshwar Tauba Gonde v. State of Maharashtra*, 2015 SCC OnLine Bom.4189.
- h) *State of Maharashtra v. Vishnu Tulshiram Karwate and Others*, 2020 SCC OnLine Bom.3934.
- i) *State of H.P. v. Jai Lal and Others*, (1999) 7 SCC 280.
- j) *Judgment of this Court in the case of Omkar s/o Uttareshwar Dhage v. State of Maharashtra passed in Criminal Appeal No.739 of 2018.*
- k) *Article on The Journey from One Cell to Another : Role of DNA Evidence*, (2004) 8 SCC J-17.

1) *Article on Practice and Procedure Relating to Proof of Documents, 2020 SCC OnLine Blog OpEd 34.*

On behalf of Respondent No.1 State & Respondent No.2 Informant :

8. Learned APP as well as learned counsel for informant in answer to above submissions, would point out that, on the point of age, evidence of PW7 is more than convincing. According to them, PW7 is a Gram Sevak. That, he has carried certificate issued by Gram Panchayat. That, birth of victim taken place in a house and the Arogya Sevika, who is appointed by the Government, has also appended signature over the certificate and therefore, she was source of information about date of birth and therefore, prosecution has proved the age of the victim by leading cogent, convincing and legally acceptable evidence. On this count, they seeks reliance on the judgments of Hon'ble Apex Court in the case *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, AIR 1983 SC 753; *Harpal Singh and Another v. State of H.P.*, AIR 1981 SC 361 and judgment of this Court in the case of *Dada Laxman Gaikwad v. State of Maharashtra*, 2018 (3) Mh.L.J. (Cri) 586.

9. It is further submitted that, victim herself is informant and her evidence, which is convincing and cogent, has remained intact and

unshaken. That, in the learned trial Court itself, defence has admitted medical evidence and therefore, there is no challenge to the medical findings on examination of victim.

For all above reasons, they both support the judgment and order of conviction and pray to dismiss the appeal for want of merits.

BRIEF ACCOUNT OF EVIDENCE IN TRIAL COURT

10. In support of its case, prosecution has adduced evidence of in all seven witnesses. The sum and substance of their evidence is as under :

PW1 Victim, who herself is informant, has deposed at exh.37 initially by giving her date of birth as 16-09-2006 and she further stated that, in March 2022 i.e. at the time of incident, she was 15 years and 9 months old. After stating about occupation of her parents, she deposed that, she knew accused, who was her father's friend and who used to visit their house. She stated that, he used to carry food packets for her and also used to feed her but at such time, he used to move his hand on her body and would say that he loves her and likes her. According to her, one day in March 2022, he called her beside a lake in the evening and when she went there, he again said that he liked her very much, pulled her close to him, forcibly

hugged her and kissed her on cheeks and lips. She deposed that, she tried to push him away, but he forcibly had sex with her by pressing her mouth and when she questioned him, he allegedly said that he loved her. That, he also threatened her to not to disclose the incident to her parents or else he would kill them and therefore, she claims that she did not disclose to her family. She deposed that, he used to take rounds to her house and make gestures to her to come near lake and due to fear, she used to go there and always he had sex with her against her wish. That, on 13-07-2022 also he had forcible sex with her after calling her to lake and so due to repeated acts, she disclosed the incident to her parents. She deposed about lodging complaint exh.38 and also assigned reasons for delay by stating that, the delay was for the reason that she herself was under fear and her parents were also under shock and fear.

While under **cross-examination** she is unable to state the exact date when she met accused first time. She denied any discussion taking place between her parents and villagers about lodging complaint. She answered that, after 10th Standard, she did not take education and she also answered that she was not knowing what is good and what is bad at that time. She admitted that, prior to lodging complaint, she did not inform her parents nor disclose them

about he providing her food packets at their house and moving his hand on her person nor she informed about she being called at the lake. In further cross-examination, she gave distance between her house and lake and she also gave its location and its surroundings. She admitted not reporting about threats. She admitted that, at the spot, there is hard surface. She also admitted that, when accused felt his hand over her body and had sex, she did not shout for help. She answered that, on the date of incident in March 2022, as she returned at 08.30 p.m., her parents questioned her. In further cross-examination, she answered that, accused used to talk with her on mobile, which he gifted her, but parents had no knowledge about it. She admitted that, on 13-07-2022, her parents caught-hold of her while talking on phone with accused and questioned her about the mobile and on 14-07-2022, she informed that, it was gifted by accused and she admitted that, her parents disliked her talks with accused on mobile. She admitted that Police took mobile during investigation. Rest is all denial.

11. **PW2** is the father of the victim, who gave date of birth of his daughter and about she taking education upto 10th Standard. According to him, on 13-07-2022, finding her daughter crying, he

asked her and claims to have learnt from her that accused used to bring food packets for her, used to touch her body, expressed his liking for her, grooped her, and on 13-07-2022 calling her beside the lake and having forcible sex with her followed by threats to kill her parents and to not to inform anyone. He also deposed that, after hearing his daughter, they were in shock and fear, but subsequently they went to Police Station and his daughter filed complaint.

While under **cross-examination** only there are questions about his daily work, about place of birth of his daughter in the house, her education and about not informing about the incident to anyone in the village.

12. **PW3** Yogesh Gagre is the pancha to seizure of clothes of informant. He identified seizure panchanama at exh.44.

13. **PW4** Sudam Vishnu Gajre is pancha to seizure of clothes of accused. He identified seizure panchanama at exh.48.

14. **PW5** Dr.Akshay Kailas Zine is the Medical Expert, who deposed about examination of accused and obtaining samples. According to him, he did not notice external and internal injuries and therefore, he reserved opinion for want of Chemical Analyzer (CA) report.

15. **PW6** Pramod Wagh (API) is the Investigating Officer, who narrated all the steps taken by him during investigation after registration of crime.

16. **PW7** Vishal Zaware is the Gramsevak, who placed on record documents at exh.70 and exh.71.

ANALYSIS

17. In view of charge under the POCSO Act and in view of claim of prosecution that victim was a “minor” i.e. under 18 years of age, it is to be seen whether prosecution has discharged its burden in proving minority of victim so as to gravitate charges under the POCSO Act.

18. Here, **PW1** victim herself is informant and in the opening paragraph of her testimony at exh.37, victim gave her date of birth as 16-09-2006 and place of birth as Palaspur.

PW2 father of victim also in his examination-in-chief at exh.41 gave date of birth of his daughter as 16-09-2006.

That apart, prosecution has adduced evidence of **PW7** Zaware, who was a Gramsevak of village Palaspur Gram Panchayat at relevant time and his evidence is at exh.69. As age determination is crucial factor, his entire evidence before the trial Court is reproduced which

is as under :

“He deposed that, he was carrying birth record as per Court summons and he deposed that, on 17-09-2006 information of victim’s birth was received by his office i.e. information sent by Arogya Sevika of Sub-center Hospital. He gave name of the parents of the victim and their address and deposed that, birth date of the victim was 16-09-2006 and birth place was Palaspur and it was duly recorded in the year 2006 in the register and he placed on record certified copy of extract of said register, which he identified to be at exh.70 and also identified birth certificate exh.71 produced on its basis.

Above witness is subjected to **cross-examination** by learned defence counsel wherein he answered that as per birth report exh.70, place of birth is shown as home. He admitted that, the place where informant’s signature is shown, there was no signature and it was merely stated as Arogya Sevika. He admitted that, name of informant is also not mentioned. He is unable to state who was the Gramsevak who noted the entry in the register and unable to state whether after receipt of information of birth date, their office verified it. He admitted that, if birth takes place in hospital and hospital record is received by their office then it is considered as 100% correct.

19. Pointing to the above evidence, learned counsel for appellant would question credibility of above oral evidence as well as documentary evidence at exh.70 and 71. He put-forth a case that, firstly, victim's birth has taken place in a house, secondly, above witness has admitted that, there is no name of the informant, who gave information to Gram Panchayat and thirdly, said official Arogya Sevika, whose mere signature is appended, is not examined as a witness.

20. In the light of above submissions, it is pertinent to note that, firstly, PW7 is Gramsevak of village Palaspur. Both informant victim and her father have given birth place as house in Palaspur. The then Arogya Sevika, who is appointed by the Government, has apparently passed information to the Gram Panchayat office and on its basis, entries are taken in the register of birth. Certified copy of relevant record of register is at exh.70 and is got proved through PW7 Gramsevak. On the basis of said information in the register, as usual, birth certificate exh.71 has been issued by Gram Panchayat. Therefore, there is a public document coming from the custody of public servant and in view of Section 35 of the Indian Evidence Act, the document as is coming from custody of public office i.e. Gram

Panchayat, it indeed carries probative value. Mere failure of prosecution to examine the relevant Arogya Sevika at that point of time is itself not a good ground to doubt the veracity of the documents at exh.70 and 71, which are maintained in the official capacity by a public servant.

Resultantly, in the considered opinion of this Court, the above objection and ground raised by learned counsel for appellant, has no substance. On the contrary, from the evidence of informant herself, her age has come as 15 years and 9 months old. Going by the date of occurrence i.e. in March, 2022 and going by date of birth, apparently victim is few months short of 16 years and as such, thus, below 16 years of age and indeed a “minor”.

21. Now, as regards to offences is concerned, again one has to fall back on the testimony of victim, which is also reproduced in aforesaid paragraphs. After, naming accused to be friend of her father and he visiting her house and carrying food and snacks packets for her, she has deposed that, he used to say that he loves her and likes her, he used to move his hand over her head, back as well as chest, which is a private part. She has stated that, on one day in the month of March 2022, he called her besides the lake and when she

went and questioned him for calling, she deposed that, he again expressed his liking of her, pulled her closer to him, kissed her at cheeks and lips. She deposed that, she tried to push him away but he forcibly hugged her and by pressing her mouth, he had sexual relation with her. She has used the word “forcible sex” suggesting her resistance. She deposed about being threatened also. She claims that, due to fear of threat, she used to go whenever he called her besides the lake and finally, on 13-07-2022 when he again had repeated the act of forcibly having sex with her, after returning home she reported her parents. She has specifically stated about forcible sexual relations suggesting her to be not a consenting party. Moreover, in her cross-examination, more particularly in paragraph 6 she answered that she did not knew what is good and what is bad at that time. The manner of questioning in paragraph Nos.8 and 9 and the nature of suggestions put-forth leaves no manner of doubt that there is no serious cross-examination, rather occurrence is got proved in cross-examination also.

22. Medico-Legal Examination Report of victim is admitted by accused in trial Court itself, which carries history of sexual assault 2-3 times and recent incident to be of 13-07-2022.

23. As stated above, in the trial Court, defence has admitted the medical evidence i.e. Medico-Legal Examination Report of Sexual Violence and therefore, prosecution seems to have not examined the Medical Expert, who had occasion to physically examine the victim.

Even in view of decision of the Hon'ble Apex Court in the following cases, when evidence of victim inspires confidence, corroboration from other corners need not be insisted for.

The Hon'ble Apex Court in the case of ***Dola @ Dolagobinda Pradhan and Another v. State of Odisha***, (2018) 18 SCC 695, has enumerated and summarized the principles as to when sole testimony of prosecutrix can be relied for convicting accused. In paragraph 6, the Hon'ble Apex Court has observed as "*It is well-settled that version of prosecutrix is believed, basic truth in her evidence is ascertainable and if it is found to be credible and consistent, the same would form the basis of conviction. Corroboration is not a sine qua non for conviction in rape case. The evidence of victim of sexual assault stands on par with the evidence of an injured witness and is entitled to great weight, absence of corroboration notwithstanding. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no*

reason to insist for corroboration.”

Law to such extent is reiterated in numerous judgments including Judgment of Hon’ble Apex Court in the case of ***State of Himachal Pradesh v. Manga Singh*** (2019) 16 SCC 759 and the relevant paragraph for ready reference is borrowed and quoted hereunder :

“10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basis infirmity and the “probabilities factor” does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”

24. Much thrust is laid by learned counsel for appellant on the point of delayed reporting. Admittedly, last occurrence is of 13-07-2022 and FIR by PW1 victim is of 01-08-2022 and as such,

there is delay of 18 days. However, in her testimony itself in examination-in-chief, victim has supplied reasons for the delay by stating that as she herself was under fear and even as her parents were under shock and fear, there is delay. Thus, here there is reason assigned for delayed reporting. Even otherwise, in cases of such nature, delay if any, is insignificant and it is fairly settled position on this ground.

25. Another ground raised in appeal is that, there is no convincing evidence that victim was below 16 years of age and moreover, learned trial Court has recorded conviction under Section 376(2)(i) of the IPC, which is already repealed.

It is true that, Section 376(2)(i) of the IPC is repealed since 21-04-2018, however, here, there was also charge of Section 376(3) of the IPC and conviction is also recorded for the same. Therefore, for such reason also, there is no merit in the submission that there is illegality committed by the trial Court while convicting the accused under said Section.

26. The facts in the cases cited by the appellant, are distinguishable with the case in hand and therefore, cannot be relied.

SUMMATION

27. To sum up, sole testimony of victim as is inspiring confidence and when her evidence is found to be of sterling quality, there is no need for further corroboration. There is cogent, reliable and overwhelming clinching evidence on the point of her minority. Victim has narrated the acts of accused of outraging her modesty and has deposed about she being forcibly ravished couple of times. Therefore, necessary ingredients for attracting offence under Section 376(3) of the IPC are indeed available.

No perversity or illegality being shown in the impugned judgment, the appeal deserves to be dismissed. 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/- (Rs.Ten Thousand only).

(**ABHAY S. WAGHWASE**)
JUDGE