



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

CRIMINAL APPEAL NO. 656 OF 2025

Fakira @ Bapu Natthu Chavhan
Age: 77 years, Occu.: Nil,
R/o. 15, Kalika Nagar,
Near Gokarna Society, Nakane Road,
Deopur, Dhule, District Dhule.

.... Appellant

Versus

1. The State of Maharashtra
Through its Deopur West Police Station,
Dhule, District Dhule.

2. XYZ

..... Respondents

.....

Mr. Vijay B. Patil, Advocate for Appellant.

Mrs. Chaitali Chaudhari Kutti, APP for Respondent No.1.

Miss Mayur S. Hange, Advocate for Respondent No.2 (Appointed).

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 13-10-2026

Pronounced on : 14-10-2026

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction dated 05.08.2025 passed by learned Special Judge [POCSO] and Additional Sessions Judge, Dhule in Special [POCSO] Case No 124 of 2023 holding appellant guilty for offence under Section 377 of IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. In brief, case of prosecution in trial court was that, accused committed unnatural offence with a child of nine years age on 20.06.2023. The boy reported it to his mother PW1 who set law into motion by approaching police. On the strength of said report, PW8 carried out investigation and on gathering sufficient evidence, he chargesheeted accused. On appreciation of oral and documentary evidence, learned trial court was pleased to convict the appellant for above offences. Hence the appeal.

BRIEF ACCOUNT OF THE EVIDENCE ON RECORD.

3. **PW1** Informant, in her evidence at Exhibit 11, stated that on 20.06.2023, she did not find her son who had gone out to play and therefore she went in his search. While on the way she was chatting with another lady, after half an hour, she saw her son coming from Datta Mandir side. Accused was coming behind him. Her son had a packet of biscuits in his hand and he told that it was given to him in temple. That night, son made complaint of pain in the stomach. On next morning also he made complaint of pain in stomach but was made to go to school and he accordingly went and returned back in the afternoon, but she claims to have noticed him to be unwell and therefore, on inquiry, she learnt from him that victim had vomiting in the school and therefore she made further inquiries, upon which he

narrated that accused removed his pant as well as shirt, touched his private part, tingled it and thereafter accused inserted his private part in victim's mouth and also inserted it in his anus. After return of husband, the incident was reported to him and they approached police.

4. **PW2** is the victim whose evidence is recorded in question-answer form at Exhibit 14. (Details of his testimony would be dealt at relevant point later on.) **PW3** is the panch to spot panchanama. **PW4** is the doctor who examined victim and issued certificate Exhibit 21 and in para 2 of the chief, doctor narrated what was noticed on the genitals and private parts of the victim. **PW5** is the lady who met PW1 midway while she was going in search of her son. **PW6** is the doctor who examined accused. **PW7** is the carrier. **PW8** is the investigation officer and **PW9** is the Headmaster of the school where victim undertook education.

SUBMISSIONS

On behalf of the Appellant-Accused :

5. Pointing to the above evidence, learned counsel for the appellant would submit that there is false implication. That, there is no convincing and cogent evidence in support of prosecution story. He pointed out that, mother's evidence is hearsay and moreover, self-

contradictory. Learned counsel took this Court through the answers given by victim, both during examination-in-chief as well as cross, and would submit that said evidence could be possibly a tutored account. He would submit that there is delayed reporting as a result of which there is possibility of false, concocted story being narrated. He would fairly submit that, there is no serious challenge to the aspect of minority of victim. According to him, medical evidence is not fully supporting prosecution. He pointed out that, very doctor, namely Nilgandh, who examined the victim, has not stepped into the witness box. According to him, there was no evidence of any traces of blood or semen on the clothes of the boy and moreover, clothes were reportedly washed. Thus, according to him there is no scientific evidence and for all above reasons, he would submit that as the case of prosecution was weak, benefit of doubt be extended to the accused. Lastly he submitted that, accused is now almost 80 years of age and has ailments and therefore, he urges for leniency by reducing the sentence.

On behalf of the Respondents, i.e. State as well Victim :

6. Per contra, learned APP as well as learned counsel appointed to represent the victim, would support the impugned judgment by submitting that, testimony of victim finds support from mother.

According to them, there is medical evidence which also supports victim's testimony and as charges are duly proved, it is submitted that, trial court rightly convicted the appellant. Offence being serious one, they pray to show no leniency.

ANALYSIS AND CONCLUSION

7. Here, victim is said to be a minor. PW9 has been examined by prosecution but in trial court there does not seem to be serious challenge on the point of age of victim. Here also, learned counsel for the appellant was fair enough in submitting that there was no challenge to the minority of the victim. Resultantly, victim is held to be minor at the time of incident.

8. At the threshold, evidence of victim is put to scrutiny which is at Exhibit 14. Its scrutiny shows that his evidence is recorded in question-answer form. From the answers given therein, it is emerging that victim was of 9 years age and was studying in 4th standard. Trial court seems to have got itself convinced whether the child understood what is right and wrong and what is the importance of telling truth. From question no. 40 onward, occurrence is brought on record and the child has stated that it was evening time and he had gone to the temple. In answer to question no. 44, he stated that in the temple

there was a man, a boy, a girl as well as “baba”. On further question as to who was the “baba”, he has answered that “baba means the same person who did the act with him.” Then question no. 46 is posed to him as to, ‘what act he did?’, to which child has answered that, ‘he did the act’. So he is again asked, ‘what did he mean by he did the act?’, to which the child answered that there was a *kachha* road and there might be trees and he was taken to the trees and then accused told to let him see whether he was fair or dark and thereafter, child victim answered that, accused removed victim’s pant and inserted his private part in victim’s anus and that victim had pain. That, accused was about to tell something and victim told accused that let him wear his clothes first. Thereafter victim answered that he immediately came home running and did not listen what accused was about tell him. To question no. 54, he answered that he came home and told everything to his mother. To a question whether he had any other problems, he answered that he had conjunctivitis. When he was again asked whether he had some other problems, it is noted that victim boy questioned the court whether he should tell what had happened on earlier date and when the court asked him to state it, he stated that, there are trees and bushes near his house, baba (accused) gave him a chit and threatened to kill him and at that time baba had knife in his hand.

While under cross which commences from question no. 71, to a question whether his parents had discussion about what to state before going to police station, he answered that what had happened with him was stated there. Some omissions are brought in further questions during cross. To a suggestion in question no.105 that baba has not done any act, he answered that, 'he has done'. While answering question no. 109 he denied that he was giving false statement and rather stated that he was saying the truth. He also denied quarrel between his father and accused. To a question whether he told his parents about pain in anus on the same day, he answered that, he told it on the next day.

9. Thus, from above testimony of child, it has come on record and child has categorically stated that accused, after stripping the child on the pretext of seeing his complexion, inserted his penis in child's anus. Even in cross, suggestion is given whether the pain to the anus was reported to the parents on the same day, which means that there is no serious challenge to the act of accused.

10. Mother PW1 in her evidence has categorically stated that, when she went in search of her son, she saw him coming from the temple side. After dinner, victim was found to be silent and he made

complaint of pain in stomach. Next morning also, he made complaint of pain in stomach. But mother thought that he was finding excuse to not to go to school, and she made him go, but she deposed that when he came home, that time he appeared to be sick and told that he had vomiting in school, upon which she claims to have made further inquiries and learnt that accused touched her son's private part, tingled it saying that he does the same to other boy. Mother has deposed that, he further told her that accused inserted his private part initially in mouth and thereafter in anus.

11. Therefore, from above discussion it is clear that victim, in his evidence, has categorically stated the act of accused. He has also reported his mother and she has also narrated what she heard from her son. There is indeed variance on the point of accused giving his male organ in the mouth of victim, however, on the point of penetration of penis of accused in the anus is consistently coming on record from both, victim as well as mother. The child that night was found to be silent and was complaining of stomach pain that night as well as on the following day and he also reportedly vomited.

12. After the reporting, police seems to have referred victim to PW4 who is examined at Exhibit 20 and in para 2, this medical expert has

stated that there was swelling on scrotum and contused abrasion of the size of 1 cm X 0.5 cm X 0.5 cm, reddish. Said injury was within 24 hours. This medical expert has opined that there was forceful penetration of penis in the anal region of the victim.

Above witness is cross examined on the point of date of admission in the hospital and date of discharge. Expert has admitted that she did not mention the age of injury in the certificate and she is unable to assign reason why age of injury was not mentioned. She denied that if there is forceful penetration in anus, then anal sphincter tone will not be normal or will be absent. But she admitted that there was no rupture. She again answered that according to her, there can be rupture to anus only in case of forceful penetration. She admitted that, her colleague doctor namely Dr. Sunil has not signed over the certificate and that Dr. Nilganh was present during examination of the child. She admitted that, insertion of one finger in anus can also cause injuries mentioned in Exhibit 24.

13. From above discussion it is clear that, victim's evidence is inspiring confidence. There is corroboration from mother. There is also corroboration from medical witness and medical evidence. Nothing adverse has been brought in the cross of the above witnesses

as well as other prosecution witnesses like carrier, pancha, doctor who examined accused and headmaster.

14. Though submission is made that accused is octogenarian and deserves leniency, this Court is not inclined to do so, more particularly in the light of gravity of offence which is substantiated and proved.

15. Perused the judgment. It is noticed that trial court has meticulously considered each and every aspect put forth by each of the sides. Sound reasons are assigned while accepting the case of prosecution. There being no good ground for interference, the following order is passed :

ORDER

- I. The 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.]