

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.209 OF 2023
WITH
INTERIM APPLICATION NO.3547 OF 2022
IN
CRIMINAL APPEAL NO.209 OF 2023**

Sagar Raju Rathi

.... Appellant

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Manan K. Shah a/w Ms. Farhana Shah, appointed Advocate for Appellant.
- Ms. Gauri S. Rao, APP for the State/Respondent.
- Ms. Chaitrali Deshmukh, appointed Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.
DATE : 24th AUGUST, 2026**

JUDGMENT : (PER : SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and Order dated 23/03/2015 passed by the Additional Sessions Judge, Nashik, in Session Case No.360 of 2013. The Appellant was the original accused No.1. His wife was the original accused No.2. She was also convicted by the trial court. However, she was

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acquitted by a Single Judge Bench of this Court in a separate Appeal filed by her.

2. The Appellant was convicted for commission of the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), he was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/-. In default of payment of fine, the Appellant was directed to suffer further rigorous imprisonment for 5 years.
3. The Appellant was acquitted from the charges of commission of the offence punishable under Section 10 of POCSO. The original accused No.2 was convicted and sentenced under Section 17 of POCSO, but she was subsequently acquitted as mentioned earlier.
4. Heard Mr. Manan K. Shah, learned counsel for the Appellant, Ms. Chaitrali Deshmukh, learned counsel for the Respondent No.2 and Ms. Gauri S. Rao, learned APP for the State.

5. The prosecution case, in brief, is as follows. The FIR was lodged by one Sunanda Pawar, who was a neighbour of the victim and her family. The victim in this case was a 6 year old child. The Appellant was her stepfather. It is the case of the prosecution that she was subjected to sexual assault on various occasions. The victim was badly physically assaulted by the Appellant. When the victim visited the house of P.W.2, she observed the injuries on her. She inquired with the victim's mother, i.e., the original accused No.2, but she did not give proper answers. She refused to lodge a complaint against her own husband, i.e., against the Appellant. Therefore, P.W.2 approached the police on 14/10/2013 and lodged her FIR bearing CR No.3157 of 2013 at Sarkarwada Police Station, Nashik. The Appellant was arrested on the same day. He was then taken into custody. The investigation was carried out. Various Panchanamas were conducted. The victim was sent for medical examination. After completion of the investigation, the charge-sheet was filed. The case was tried before the learned Trial Judge as mentioned earlier.

6. During the trial, the prosecution examined 6 witnesses, including the victim, the first informant, the Panchas, the Medical Officer, and the Investigating Officer. The defence of the Appellant was that, on one occasion, the first informant had thrown his son in front of a vehicle and therefore, there was a quarrel between the Appellant and the informant. This was one reason for their enmity. According to him, he had given Rs.25,000/- to the first informant. Instead of repaying the loan, she wanted to avoid it, and hence, a false case was lodged against him.

7. The learned trial Judge did not believe the defence of the Appellant. She relied on the evidence of the victim, the first informant, and, in particular, on the evidence of the Medical Officer. Based on that, she convicted and sentenced the Appellant as mentioned earlier.

8. The evidence of the victim in this case is very important. She was examined as P.W.1. She was 6 years of age at

the time of the incident in the year 2013, and her evidence was recorded on 22/08/2014. There was no dispute about her age. She deposed that the Appellant was her stepfather. He was not doing any work. Her mother was working as a maid servant. The first informant's son was her friend. She narrated the incident by stating that she was assaulted by the Appellant. He poured chilly powder in her private parts. She was assaulted by the Appellant by using a wire attached to the mobile phone charger. He used to tie her hands with that charger wire. He used to put her face and head in the toilet block. She further deposed that she narrated that incident to the police. She had also narrated the incident to the first informant. She further deposed that she was sent to the hospital for examination.

In the cross-examination, she deposed that she had met the first informant in the Court at the time of deposition. She resided with the first informant for 7 to 8 months. She used to like the house of the first informant. She admitted that the first informant used to give her sweets and gifts. She was specifically asked whether she disliked her parents as they used to ask her to

study. She specifically denied it by stating that she disliked them as they used to beat her. Her mother used to bring tiffin from outside. She was not cooking food in the house. She admitted that, on one occasion, because the informant pushed her, she had fallen down and had sustained an injury on her knee, and there was a quarrel between the Appellant and the informant. She admitted that the Appellant asked her to come back to their house. But she denied that the first informant was not willing to take her back. The toilet was near the room of the Appellant. She denied that the Appellant was working as a watchman at the Bungalow of one Palve.

9. The first informant used to ask her to stay with her. But she denied that the first informant was telling her not to stay with her parents. She admitted that the first informant used to tell her that if she went back to her house, the Appellant would beat her. She denied the suggestion that the Appellant had not assaulted her and had not put chilly powder in her private parts, and that she was stating this as per the instructions of the first informant. She used to call the first informant as Mummy. She

used to listen to the first informant. She admitted that the first informant accompanied her to the police station as well as to the hospital. She again denied that she was deposing at the instance of the first informant. She correctly answered that the chilly powder was red in colour. The accused No.2 used to attend her work in the morning and used to return in the afternoon. She denied that there used to be frequent quarrels between the first informant and the accused.

10. The prosecution witness No.2 was the first informant. She deposed that the victim used to come to her house to play with her children. She was at her house for 6 to 7 months as the accused No.2 was pregnant. After the delivery, the accused No.2 took the victim back. But after 9 to 10 months, again, the accused No.2 brought her back.
11. On 13/10/2013, the accused No.2 came to her house with the victim on the occasion of Dussehra. At that time, she saw injuries on her person, near her eyes. The accused No.2 told P.W.2 that the victim had fallen on a water tap and had sustained

injuries. When the accused No.2 left the victim at her house, she inquired with the victim, who told her that she was assaulted by the Appellant. P.W.2 told the accused No.2 to lodge a police complaint, but she did not lodge any complaint. On the next day, when P.W.2 was giving bath to the victim, she noticed injuries on the victim's private parts. The victim disclosed that her father used to go to put chilly powder in the private parts and used to insert some object in her private parts. She also told her that the accused used to beat her with a charger wire. The accused No.2 still did not want to lodge the FIR. Therefore, P.W.2 approached the police station and lodged the FIR, which is brought on record at Ex.25. The victim was referred to Civil Hospital for medical examination. P.W.2 showed the spot of the incident to the police.

In the cross-examination she denied the suggestion that since the victim staying with her she had attachment for the victim. She did not lodge the FIR on 13/10/2013 after observing the injuries on her person, but lodged a report on 15/10/2013. Both the accused were residing in the outhouse of one Palve.

The Appellant was working as a watchman. Dr. Palve and his wife were an old couple, and they were residing in that Bungalow. She stated that her husband was an agriculturist. She denied the suggestion that she had taken Rs.25,000/- from the Appellant and that she was not returning the money on the ground that she had incurred expenses towards maintenance of the victim and that, therefore, she had lodged a false FIR. Dr. Palve's house was situated in a thickly populated area.

12. P.W.3 and P.W.4 are the Panchas. P.W.3, Yamuna Dagale, was a Pancha when the victim's clothes were produced. P.W.4 Shivaji Ahire was a Pancha for the spot Panchanama, which is produced on record at Ex.35. At the time of conducting the spot Panchanama, the charger and the wire were seized. They were produced before the Court.

13. P.W.5, Dr. Pramod Chaudhari, was an important witness. He had examined the victim. He deposed that the victim was initially examined in the casualty by CMO. The victim was examined on 15/10/2013. She was examined by various

experts. She had multiple injuries on her body. There were bilateral periorbital swelling with left pinna swelling with multiple bruises and abrasions on thighs and back. On local genital examination conducted by PW.5, he found that her local genital parts had swollen bruises, tender swollen bruises, tender fresh tear present swollen bleeding present, with fresh tear of Fourchette with bleeding with fresh tear of hymen at 5, 6, 7 O'Clock position. There was Annular type of hymen. He deposed that such type of hymen is seen in assault like sexual assault or if any object is inserted forcefully in the private part. There was fresh tear of perineum seen, bleeding present. The CMO collected samples of blood, nail scrubbing, vaginal swabs and vulvul swabs. On the basis of the examination, PW.5 opined that the findings mentioned in the certificate are consistent with recent sexual intercourse/assault. The original treatment papers were produced on record. The CMO had noted multiple reddish brownish scabbed linear abrasion, six in number, ranging from 7 cm to 0.3 cm. to 4 cm x 0.2 cm, present over both buttocks around anus placed horizontally. CMO had also noticed multiple, contusions bluish black size ranging 2.5 x 1 cm to 1 cm

x 1 cm present over inner aspect and back of both the thighs. Multiple reddish brownish scabbed abrasions, curvilinear size ranging 1.8 cm x 0.3 cm to 1 cm x 0.2 cm were present over both buttocks and inner aspect of thighs. The medical certificates were produced on record at Ex.39 and 40.

The cross-examination did not reveal anything in favour of the accused.

14. P.W.6 was the Investigating Officer, API Anuja Rajguru. She deposed about recording of the FIR and sending the victim for medical examination. She herself had observed the well marks on the buttocks and burn injuries on the buttocks. She visited the spot of the incident and conducted the Panchanama. She deposed about the investigation carried out, various Panchanamas, spot Panchanama, articles forwarded for chemical analysis. She identified the accused before the Court.

In the cross-examination, she admitted that the victim had stayed with the complainant for 6 to 7 months prior to the

incident. She denied that she was deposing falsely. She had not carried out any investigation regarding the transaction between the first informant and accused.

This, in short, is the evidence led by the prosecution.

15. Learned counsel for the Appellant submitted that the prosecution has not proved any intention on the part of the accused to commit this offence. There was no motive. The defence was not taken into consideration by the Trial Court. There was a monetary transaction and there was quarrel on one occasion. Both these aspects are ignored by the learned Trial Judge. He submitted that the Appellant has not committed any offence. He further submitted that if the conviction has to be upheld sentence be reduced because he is in custody continuously since the year 2013 without any parole or furlough leave.

16. The learned APP, as well as the learned counsel for the Respondent No.2, supported the impugned Judgment. They

submitted that the evidence of the victim, the first informant, and the medical evidence sufficiently corroborate each other, and the prosecution has proved its case beyond reasonable doubt.

17. We have considered these submissions. The most significant evidence in this case is in the form of depositions of P.W.1, 2 and 5. The victim had narrated the incident in sufficient detail. Her evidence was supported on all aspects by the evidence of P.W.5. The victim was a 6 year old helpless girl residing with the Appellant. All these injuries mentioned by P.W.5 are quite serious. They could neither be self-inflicted injuries nor could they be a result of an accident. Both the accused have not explained those injuries, though the victim was residing with them.

18. The manner of sexual assault and physical assault was brutal and cruel. The deposition of P.W.1 does not suffer from any infirmity. She is clearly a truthful witness. She, on her own, did not complain to anyone else because her own mother was

not supporting her. It is only when that the first informant noticed those injuries, that the offence came to be registered.

19. The first informant herself did not have any motive to implicate the accused falsely. Though the Appellant claims to have given Rs.25,000/- to the first informant, there is no material to support his contention. The earlier quarrel was not to the extent to prompt the PW.2 to lodge a false FIR against the Appellant. More importantly, the informant's statement was supported by the medical examination. She had narrated sufficient details in her FIR. There is immediate corroboration of her story in the form of medical evidence. We do not find any infirmity in her evidence.

20. The evidence of PW.5, i.e., the Medical Officer, shows the suffering of the victim. The injuries are described in sufficient details. Her version is fully supported by the medical evidence. The offence is heinous and cruel.

21. Considering all these aspects, we are of the opinion

that the prosecution has proved its case beyond reasonable doubt.

22. We seriously considered the learned counsel's prayer for reduction of sentence. However, looking at the nature of injuries suffered by the victim and the manner in which she was put in a helpless condition, there is no scope for reducing the sentence imposed in this case. We are not inclined to reduce the sentence of the Appellant.

23. We do not find any merit in the Appeal. The Appeal is dismissed.

24. With dismissal of the Appeal, the connected application is also disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)