

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

CRIMINAL APPEAL NO. 179 OF 2023

Chandankumar Ujagar Sahani
Age 25 years Residing at
R/a :- Public toilet Build-up
By Bombay Post Trust,
Sant Sawta Marg,
Reay Road, Mumbai.
At present in Kolhapur Central Prison,
Kalamba, Maharashtra

...Appellant

Versus

1. The State of Maharashtra
[At the instance of Sewree Police Station]

2. XYZ

...Respondents

Mr. Yashpal Thakur, appointed Advocate for the Appellant through Legal Aid.

Ms. Supriya Kak, APP for Respondent No.1- State.

Ms. Savvy Kolhekar, appointed advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 04 MARCH 2026

JUDGMENT (PER SANDESH D. PATIL, J) :

1. The present Appeal is preferred against the Judgment and Order dated 30th June, 2022, passed by the learned Extra Joint Special Judge,

under POCSO Act, 2012, Greater Mumbai in POCSO Special Case No.5 of 2020 whereby the learned Special Judge convicted the Appellant for the commission of offence punishable under Section 376(3) of the Indian Penal Code. The Appellant was sentenced to undergo rigorous imprisonment for life which shall mean imprisonment for the remainder of his natural life and to pay fine of Rs.1000/-, and in default of payment of fine, he was sentenced to undergo further rigorous imprisonment for two months. Accused was also convicted for commission of offence punishable under Sections 6 and 8 of the Protection of Children From Sexual Offences Act, 2012 (“POCSO”). However no separate punishment was awarded as per Section 42 of the POCSO Act.

2. The case of the prosecution is that the first informant who was mother of the victim had lodged the F.I.R. The informant used to reside near Reay Road Station along with her four daughters. The victim was 9 years of age at the time of incident. The complainant stated that her daughter i.e. the victim was playing with her other sisters. The victim, had informed one of her sisters that one of the workers of the common washroom had removed her inner wear and had committed sexual intercourse with her. The said sister informed the incident to the

informant. She took the victim to the same washroom for enquiry. The victim identified the person who had committed sexual intercourse with her. There were other ladies who had accompanied the complainant. All of them caught hold of the accused and started beating him. They took the accused to the police station. The police referred the victim for medical examination. The FIR was lodged. The same was exhibited during trial at Exhibit "20". The police completed the investigation. The charge was framed against the Accused on 17th June, 2021. The prosecution, in order to establish their case had examined six witnesses.

3. PW-1 who is the mother of the victim had narrated in her examination-in-chief as to how the incident had taken place. She stated that the victim was playing along with her other sisters (daughters of PW1). She stated that the victim told her sister as to how the accused had committed sexual intercourse with her. Thereafter, PW-1 alongwith other ladies, went to the common washroom and took the accused to the police station. The FIR was lodged thereafter.

In the cross-examination, she was asked as to whether she knew one Sanjay Choudhari, who was the sweeper appointed in the washroom. She stated that Sanjay Choudhari was acquainted with her family and children.

She stated that Hasina, Sabana, Samina and Rubina were residents of the same locality. She stated that it was not correct to say that the accused was restraining her husband from selling drugs on discount, therefore, the quarrel took place between her husband and the accused. She stated that it was not correct to say Sanjay Choudhari committed sexual intercourse on the victim.

4. The prosecution examined PW-2 - the victim. She deposed that her date of birth was 20th July, 2010. She stated that on the date of incident i.e. on 5th November, 2019, she had gone to the common bathroom situated below the bridge. She stated that the accused was present there. She stated as to how the accused removed her inner wear and committed sexual intercourse with her. She stated that the accused had told her not to disclose the fact to anybody, otherwise, he would beat her. She informed this to her sister. Her sister immediately called their mother and narrated the incident to their mother. She stated that her mother took the victim to the place of incident and the victim identified the accused who had committed the act of sexual intercourse with her. She identified the accused in the Court.

In the cross-examination, she stated that she could not assign any

reason as to why she did not mention in her police statement that the accused had moved his hands on her body. She stated that she used to play with children on the road and on that day when she was playing, she went to the washroom. She stated that there were four to five drug addict persons present near the washroom. She was asked whether she knew Sanjay Choudhari to which she answered in affirmative. She was asked a specific question as to whether Sanjay Choudhari had committed bad act upon her; to which she answered in negative. She further stated that the offence was committed by the accused.

5. The prosecution examined PW-3 - Dr. Rohan Vittal Metkari, who was the Senior Resident doctor of the hospital. He had examined the victim. PW-3 stated that on 4th November 2019, he received a call to examine the victim who was present in the gynaecology department. He stated that the victim was brought for examination by WPC 112383 of Sewree police station. He stated that there was history of sexual assault by the accused. He further stated that he had examined the victim. The victim was conscious, oriented and there were no injury on the body. He stated that on examination of the genital part there was redness, multiple fresh tear at hymenal margin reddish in colour. There was no active

bleeding of blood or discharge. They preserved samples of blood and vaginal swabs. The sample of blood and vaginal swabs for DNA and for grouping were collected. Two genital swabs were collected. The victim was advised for Counselling. The medical certificate was issued by the doctor. The said certificate is at Exhibit 26.

In the cross-examination, PW-3 stated that there was one lady doctor in their team. He stated that the name of the accused was mentioned in the history. The same was verified by the victim. He denied that due to fungus infection, the hymen margin appeared reddish. The injury certificate which is produced on record at Exhibit 26 corroborates the statements made by PW-3.

6. The prosecution in support of the case examined PW-4 - Hasina Ansari, who was the neighbour of the complainant. She stated that the incident had taken place on 4th November, 2019. On the date of incident, at about 1 pm, she was coming back from the common washroom and the victim was going to the washroom. She asked the victim where she was going, to which the victim told her that she was going to the toilet. At that time, the accused was sitting on the counter of the washroom. She stated

that the mother of the victim came to her house at 5.00 pm and told her about the incident. She enquired with the victim. The victim told her that the accused had committed bad act with her. The mother, the victim, PW-4 and other persons went to the washroom where the accused was present. He was trying to run away from the spot. People caught hold of him and he was handed over to the police. She identified the accused in the Court.

In the cross-examination, she stated that along with the accused, one Sanjay was sitting on the counter. She stated that at the time of incident, no other person was present at the spot. She did not feel it necessary to go along with the victim towards the common toilet. She stated that the victim is not her relative. She stated that it was not correct to say that in order to support the case of the complainant, she is deposing falsely.

7. The prosecution examined PW-5 Chandrakant Ahire. He stated that on 4th November 2019, he was attached to the Sewree police station as API. He received the case diary of CR. 172/19 for investigation. He recorded the statements of the witnesses. He also seized the clothes of the victim, the clothes of the accused and prepared the panchanama. He visited the spot and prepared the panchanama. He collected the medical

reports of the victim and the accused. He filed the chargesheet against the accused. He stated that he could identify the accused if shown to him.

In cross-examination, he stated that after receipt of the case diary, he visited the spot. He stated that there were other persons employed in the public toilet. He stated that Bablu Singh was another employee of the public toilet. One Sanjay was also the employee of the public toilet. He stated that he recorded the statement of the employee- Sanjay on 9th November, 2019. He denied that he did not send samples to CA through one Shivaji Patil.

8. The prosecution examined PW-6 - Sachin Dattatrey Patil. He was attached to Sewree Police Station as PSI as Station Officer on day duty. He stated that when the complainant came to the police station along with the victim, she narrated about the sexual assault committed on her daughter. He called WPC Anjana Borade and the complaint was reduced into writing by the said WPC. He registered the printed FIR at Exhibit 21. He stated that he visited the spot shown by the complainant and the victim, and prepared the spot panchanama which was at Exhibit 30. He seized the clothes of the victim and prepared the seizure panchanama in presence of the panchas. The clothes were seized under panchanama at

Exhibit 31. They were at Article-C, Article-D and Article-E. He identified the clothes. He sent the victim for medical examination and also sent her before the Magistrate for recording the statement under Section 164 of the Criminal Procedure Code. He also sent samples to FSL Kalina alongwith Form II. The said Form is at Exhibit 34.

In cross-examination, he denied that Article-A was not seized from the possession of the accused. He denied that he had prepared false panchanama showing the bogus recovery of clothes of the victim. He denied that the spot of incident is famous for Charas addicted people. He denied that the statement of the victim was not recorded on 5th November, 2019, by WPC Anajana Borade. He stated that it was not correct to say that he had prepared false panchanama, recorded false statement and false documents. The FSL report is produced on record at Exhibits 3 to 8.

9. The statement of the accused was recorded under Section 313 of Cr.P.C. The defence of the accused was of complete denial.

10. The learned Special Court, after hearing the parties and after perusing the evidence passed the impugned Judgment and Order. The

learned Special Judge verified the original birth certificate of the victim and came to the conclusion that the victim was of 9 years of age at the time of incident. The learned Special Judge has recorded in the judgment as to how the incident had taken place. The learned Special Judge came to the conclusion that the witnesses were reliable, and that the offence has taken place.

Submissions of Mr. Yashpal Thakur, learned counsel for the Appellant:-

11. The learned counsel appearing for the Appellant submitted that the place was crowded and that in the washroom one Sanjay Choudhari was present. He laid specific emphasis on the fact that the said Sanjay Choudhari was not examined. He submitted that none of the independent witnesses are examined. He submitted that the medical certificate was not produced properly. He asserted that the appellant has not committed the offence. He submitted that the victim has not properly described the act and that there is inconsistency in her evidence. He, however, submitted that, in the event, the Court comes to the conclusion that the appellant is guilty of the offence, the sentence is very harsh. He submitted that the Appellant is a young person of 24 years and that it would not be proper to

sentence the accused to rigorous imprisonment for life which would mean imprisonment till the remainder of his natural life. He relied on the judgment of the Apex Court in the case of *Pintu Thakur and Ors Vs. State of Chattisgarh* [2025 SCC OnLine SC 1296].

Submissions of Ms. Supriya Kak, learned APP for the State and Mr. Savvy Kolhekar, learned counsel for the Respondent No.2:-

12. The learned counsel for the Respondent- victim as well as the learned APP submitted that the age of the victim at the time of the incident is not disputed. They submitted that the medical evidence supports the statements given by PW-1 as well as PW-2. They submitted that the victim was medically examined on the same day. As far as the submission of the learned counsel appearing for the Appellant that it was Sanjay Choudhari who had committed the offence is concerned, both of them submitted that the said suggestion was given to both PW-1 and PW-2 who have denied the same. They submitted that the incident happened in a ladies washroom. They submitted that the act was reported on the same day. The investigation was carried out properly. Both the counsel supported the reasoning of the learned Special Judge. They supported the impugned Judgment and order and submitted that the same does not

require any interference.

Reasons and Conclusions:-

13. We have considered these submissions. The incident in question occurred on 4th November, 2019, at about 2.00 pm. The incident had occurred in the ladies washroom. The incident was firstly informed by the victim to her sister. Thereafter, the same was informed to their mother PW-1. The first informant – PW1 thereafter, along with other persons from the locality went to the place where the incident had taken place. The people present there caught hold of the accused and took him to the police station. The statement of PW-1 depicts in detail the manner in which the incident took place. Nothing much was extracted from her in the cross examination. As a matter of fact, PW-1 was asked whether one Sanjay Choudhari who was working as a sweeper in the washroom had committed the act to which PW-1 denied the same. The version of PW-1 is in consonance with the version of PW-2 - the victim.

14. PW-2 - the victim has stated in detail the manner in which the incident took place. She identified the Accused. She was also given a suggestion that it was one Sanjay Choudhari who had committed the bad

act; to which she replied in negative. Thus, both the versions of PW-1 as well as PW-2 corroborate with each other and the same has withstood the test of the cross examination.

15. PW-3 - the Medical officer has deposed the manner in which he had conducted the medical examination on the victim. He described the injury suffered by the victim. He had extracted the blood and vaginal swabs for DNA and grouping. He had issued the medical certificate. Nothing much was extracted in the cross examination and there is nothing to disbelieve the version of PW-3.

16. The evidence of neighbour PW-4 - Hasina Ansari also withstood the test of the cross examination. Her version shows that it was the accused who was confronted and that, on the same day, the victim had pointed out that the accused had committed the act. This witness had seen the victim going towards the washroom. She had further seen that the accused was sitting on the counter of the washroom. Thus, the presence of the accused at the spot of the incident was further corroborated by the evidence of this witness.

17. PW-5 and PW-6 who were the police officers have also stated as to how they had carried out the investigation. Their evidence shows as to how the clothes were seized and sent for CA analysis. As against this, the accused has not raised any probable defence and his only defence was of complete denial. The medical evidence which is produced on record at Exhibits 3 to 8, also showed that blood was sent for analysis and vaginal swab was also sent for CA analysis. The medical certificate produced by PW-3 which is produced at Exhibit 26 shows the manner in which the assault had taken place. The statements of the PW1- informant and PW2- victim herself clearly show that the incident had taken place. Both these witnesses as well as PW-4 have identified the accused. There is no reason to disbelieve the evidence of those witnesses. They had correctly identified the accused. PW2 also correctly stated the manner in which the incident had taken place.

18. The learned Special Judge has meticulously analyzed the evidence and has rightly reached to the conclusion that the accused has committed the offence. There is no reason to term the Judgment of the learned Special Judge as perverse. The finding of facts as well as the evidence are correctly appreciated by the learned Special Court. We, therefore, do not

find any reason to take a different view as far as the commission of the offence by the accused is concerned.

19. However, what draws our attention is the operative part of the judgment whereby the accused has been sentenced to life imprisonment meaning imprisonment for remainder of his natural life. At the time of commission of offence, the Accused was only of 25 years of age. The age of the accused is also not disputed. Taking into consideration, the young age of the accused and further taking into consideration that the minimum sentence is 20 years, which may extend to imprisonment for life which means imprisonment for remainder of his natural life, we feel that the sentence which is awarded in this case needs to be reduced. We are fortified in our view by the observations of the Apex Court in the case of ***Pintu Thakur and Ors Vs. State of Chattisgarh***, which is relied upon by the learned counsel for the Appellant. Paragraphs 7 to 9 of the said Judgment are relevant which are as under :-

“7. On a reading of the same, we find that the minimum punishment delineated under the said Section is twenty years but which may extend to imprisonment for life which shall mean imprisonment for remainder of natural life of the Accused and shall be liable to fine or with death. The Special Court has not ordered death penalty but has not considered any mitigating circumstance in the instant case, instead the

higher punishment of life imprisonment for the remainder of natural life of the person has been imposed which has been affirmed by the High Court.

8. However, the minimum sentence Under Section 6 of the POCSO Act is twenty years. Bearing in mind the fact that the Appellants herein were in their early twenties when the incident took place and the fact that now they have completed only five years of incarceration and even for completion of the minimum sentence it would mean another fifteen years, we find that the Appellants are now in their mid-twenties and even if the minimum sentence is to be completed they would be in their early forties.

9. We find that the interest of justice would be served in the instant case, if we reduce the sentence imposed on them from imprisonment for life which shall mean imprisonment for the remainder of natural life to twenty years.”

20. We are therefore of the view that, the learned Special Court has imposed a higher punishment of life imprisonment for remainder of his natural life. Taking into consideration the age of the accused, we are inclined to follow the view taken in the case of ***Pintu Thakur and Ors Vs. State of Chattisgarh***. In the present case also, the accused was arrested immediately on the date of incident i.e. on 4th November, 2019. He is already in jail for more than six years. We are of the opinion that, since the accused is now nearly 31 years of age, the minimum sentence, if imposed would serve the interest of justice. We, are therefore, inclined to

reduce the sentence imposed upon the accused from imprisonment for life which is to mean imprisonment for remainder of his natural life; to that of rigorous imprisonment for 20 years.

21. Hence, we pass the following order:-

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Judgment and Order passed by the learned Extra Joint Special Judge, under POCSO Act, Greater Mumbai in POCSO Special Case No.5 of 2020 dated 30th June, 2022 whereby the Appellant was convicted for the offence punishable under Section 376(3) of the Indian Penal Code and under Sections 6 and 8 of the POCSO Act, is upheld.
- (iii) However, the sentence of rigorous imprisonment for life which was till the remainder of natural life is set aside. Instead, the Appellant is sentenced to undergo

rigorous imprisonment for 20 years.

(iv) The part of the sentence passed by the learned Special Court whereby the Appellant is directed to pay fine of Rs.1000/-, and in default of payment of fine, the accused shall undergo further rigorous imprisonment for two months, is maintained.

(v) The accused is entitled for set off under Section 428 of Criminal Procedure Code.

(vi) The Appeal is partly allowed and disposed of in the aforesaid terms.

22. Registry is directed to send a copy of this Judgment to the Appellant who is in prison at the earliest.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)