

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

**56 CRIMINAL APPEAL NO.611 OF 2022
WITH ALS/54/2022**

**XYZ
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.H.P. Jadhav, Advocate for the appellant.
Mr.PN. Kutti, APP for the respondent/State.
Mr.K.T. Jamdar, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 21.03.2023**

PC :-

01. Heard learned Advocates for the parties for some time. The learned Advocate for the appellant points out that though other witnesses have turned hostile, evidence of the complainant/victim is consistent with the prosecution story. Her age as per school record shows that she was minor at the time of incident. Her date in the school record is 07.05.2005; whereas the alleged incident has taken place on 30.11.2016 i.e. when the victim was only 11 years of age. Still the learned Sessions Judge observed that the prosecution has failed to prove that the victim was minor on the date of incident by observing that the Head Master of the school could not depose as to on what

basis the entry of the date of birth is taken in the school record and on that count the date of birth is not believed. It is further observed that the Head Master has not brought any admission papers in the Court. Further circumstance considered by the learned Judge is that other witnesses have turned hostile.

02. This Court finds that when evidence of the complainant/victim is unshattered, that itself is sufficient to prove guilt of the accused especially in the cases under Protection of Children from Sexual Offences Act. So far as observation that the date of birth is not proved is not in consonance with the legal position. On this count, this Court finds that case is made out to admit the appeal.

03. Hence, Criminal Appeal No.611 of 2022 is admitted.

04. Action under section 390 of the Cr.P.C. to follow.

05. Call for record and proceedings.

06. Insofar as Application for leave to Appeal by State No.54 of 2022 is concerned, this Court has already admitted the companion appeal. In view of the same, application for leave to file appeal by the State is granted.

07. Office to register the Appeal.

08. After registration, appeal is admitted.

09. Since action under section 390 of the Cr.P.C. is already directed to be taken in the companion appeal, no separate order is necessary in this appeal.

[KISHORE C. SANT, J.]