



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 32 OF 2021

State of Maharashtra,
Through Police Station,
Mukundwadi,
Tq. & Dist.Aurangabad.

..Applicant

Versus

Aditty Babanrao Khade
Age: 21 years, Occu.: Education,
R/o. Anand Nagar, Garkheda Area,
Aurangabad.

..Respondent

...
APP for Applicant-State : Mr.A.M.Phule

...
**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 23 OCTOBER 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. State is pressing into service instant application to grant leave to the State to question the judgment and order of the Special Judge (POCSO Act), Aurangabad passed in Spl.Case Child Prot.146 of 2016 dated 21-01-2021 thereby acquitting present respondent from charges under Section 376(2) of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act (POCSO Act).

2. Learned APP would submit that victim was 12 years old when the incident took place. On 03-06-2016, she was sexually harassed and the girl came home crying. On query by her mother, she reported the incident and was therefore, taken for medical examination. Sexual offence was revealed and therefore, matter was reported to Police on the basis of which crime was registered. Investigation revealed that respondent had committed offence under Section 376(2) of the Indian Penal Code and under Sections 4 and 8 of the POCSO Act. Apart from oral account of victim, her mother, medical experts were also examined. School authorities were also examined to establish the age of the victim. Therefore, crucial evidence was very much available, however, it is pointed out that learned trial Court has unfortunately disbelieved the case of prosecution without assigning cogent, reliable and convincing reasons. That in view of overwhelming evidence on both count i.e. age of victim as well as medical evidence, offence was proved and therefore, learned trial Court ought to have held accused respondent guilty, but having failed to do so and respondent being acquitted, there being a strong case, but still there being improper appreciation of evidence by the learned trial Court, State is intending to file appeal and therefore, he prays for leave to file appeal.

3. In the light of above submissions, we have taken survey of the evidence on record which shows that in support of its case, prosecution has examined following eight witnesses.

PW1 is mother of deceased. Her evidence is at Exh.18.

PW2 is victim. Her evidence is at Exh.20.

PW3 Dr.Megha Mohan Dama is the Doctor, who examined victim. Her evidence is at Exh.22.

PW4 Shaikh Matin Ul Haq Abdul Khaliq is Pancha to spot panchanama. His evidence is at Exh.25. Spot panchanama is at Exh.26.

PW5 Asaram Dhondiba Jaharwal (Deputy Police Superintendent) is the Investigating Officer. His evidence is at Exh.38.

PW6 Anil Parasram Ade (Sr.PI) is another Investigating Officer. His evidence is at Exh.54.

PW7 Sangita Rajendra Wani is witness from School where victim studied in 2nd Standard.

PW8 Ankur Govind Patil is Head Master in Ankur Balak Mandir, Aurangabad. His evidence is at Exh.67.

4. Here crucial evidence is of victim, her mother, medical experts and School authorities. According to prosecution, victim was 12

years of age at the time of incident.

PW1 is mother of the victim and informant. She deposed that on 03-06-2016, she was working in the house. At that time, she was suffering from epilepsy and as such victim went out of house to call her grandmother, who was residing beyond the Railway track. This witness stated that accused followed her and as stated by victim to her, accused made victim child fall down, removed her garments and he tried to insert his private part in vagina of victim. That victim started shouting and then she came home weeping and she narrated the incident and therefore, mother of victim seems to have lodged FIR Exh.19.

In **cross-examination**, initially she is questioned about circumstances surrounding the house. Then she has answered that she did not report incident to anybody. She failed to give mobile number of her husband to the Police. It seems that mother is unable to give the exact date of birth of victim.

5. **PW2** is the victim. After taking due care of her understanding capacity, learned trial Court has recorded her version wherein she has stated that when her mother suffered from fit, she went to call her grandmother and at that time accused followed her. That when they

reached near Railway track, accused made her fall down, removed his own garments and garments of victim and she stated that he tried to insert his private part in her urinal part and so she shouted and ran away from that place and reached home and informed her mother.

Cross-examination of victim shows that she is questioned about her class, her girl classmate and name of class teacher, her neighbourhood. She answered that accused does not reside in her neighbourhood but he resides in front of her house. Omission is brought on the count of going to call her mother.

6. **PW3** Dr.Dama is the Doctor, who examined victim and Doctor has given history narrated by victim and her mother. Doctor noticed bleeding to the vagina and she stated that there are signs suggestive of recent use of forcible penetration of vagina.

7. **PW7** Wani Seems to be witness from the School where victim studied. This witness stated that as per School record, date of birth of victim is 06-05-2006 and this witness has placed Exh.56 and Exh.57 i.e. admission extract and register extract on record.

Likewise **PW8** Patil, Head Master stated that victim was admitted in their School and according to School record, date of birth

of victim is 06-05-2006.

8. Therefore, the above discussed material *prima facie* shows that victim is a minor. Medical evidence suggests sexual assault. Evidence of PW7 Wani and PW8 Patil show that victim was minor. Therefore, inspite of such quality of evidence on record, learned trial Judge seems to have disbelieved the case of prosecution. Therefore, we deem it a fit case for proper re-appreciation, re-analysis and re-examination of evidence and hence, we are inclined to allow the appeal. Hence, following order :

ORDER

- I. The application stands allowed.
- II. Leave is granted to the prosecution to file Appeal.
- III. Registry to register the Appeal.
- IV. Appeal stands **admitted**.
- V. Call record and proceedings.
- VI. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the trial Court.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE