

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.229 OF 2020
WITH
INTERIM APPLICATION NO.3110 OF 2023

Omkar Dattatraya Dangat	]	..	Appellant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Adwait Bhonde, for the Appellant.

Mr.Prosper D'souza, Appointed Advocate for Respondent No.2.

Mr.S.R. Agarkar, APP for the State.

CORAM : BHARATI DANGRE, J

RESERVED ON : 5th October, 2023.

PRONOUNCED ON: 16th October, 2023.

JUDGMENT :

1] Present Criminal Appeal is filed by the Appellant calling in question his conviction under Section 363, 366A, 376(2)(n) of the Indian Penal Code read with Section 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO) and the sentence imposed upon him, in Special Sessions Case No.371 of 2015.

In the CR which was registered against him on the complaint of the father of the victim with Chaturshrungi Police Station on 21.08.2015, he came to be arrested on 23.08.2015 and as on date, it is informed that he has undergone imprisonment for 8 years and 10 days out of the total sentence imposed on him under the impugned Judgment for a period of 10 years.

2] The Appeal filed by the Appellant was admitted on 10.02.2020.

He moved an interim application seeking suspension of sentence and for release on bail, during the pendency of the Appeal.

The Application was heard by J. Prakash Naik, who was on the Bench at the relevant time and on 26.04.2022 by considering the fact that the Applicant is in custody for a period of 6 years and 8 months and on consideration of the merits of the matter, to the effect that the victim had admitted in her evidence that there was friendship between her and the accused, which converted into love affair and though he maintained physical relationship with her against her will, it was recorded that the FIR was registered on realising that the victim had conceived. A

further observation in the said order is of significance and the same reads as under :-

“The prosecution is relying upon the birth certificate produced by the victim girl while recording her evidence. According to defence source of said document is not established. No person from the office from which the birth certificate was obtained has been examined by the prosecution.”

However, considering the period of incarceration the Appellant was directed to be released on bail. He was also permitted to furnish cash bail with some other conditions being imposed on him.

3] The Appellant once again filed another Interim Application, securing his release as he was unable to comply with the conditions subject to which he was directed to be released on bail, and hence he continued to be incarcerated.

In this background, I was taken to the order passed by the Apex Court in case of “*In Re policy Strategy for grant of bail*” to tackle with the situation when an accused is unable to furnish the sureties for any reason and particularly on account of poverty. I took note of the directions issued to the DLSA.

The learned counsel for the Appellant submitted before me that if he is released on bail, he shall furnish the sureties and it is the discretion of the Court to grant him temporary bail for a specific period, so that he can furnish fresh bail bond or sureties.

4] Before I could ponder upon the said argument, I asked the learned APP to take instructions whether the Appellant is entitled to his release by taking into account the remission to be awarded to him.

On 12.09.2023, the learned APP Mr. Agarkar placed before me a report from the Prison Officer, Yerwada Central Prison and it was informed that the Appellant is entitled for remission of one year, 3 months and 13 days and by taking the same into account, he is stated to have undergone sentence of 9 years 3 months and 23 days as on 31.08.2023.

Upon such information being placed before the Court, the learned counsel for the Appellant made a request that since Record and Proceedings is received alongwith the paper book, let the Appeal itself be heard.

Accepting the said request, the Investigating Officer was directed to serve notice upon Respondent No.2 about the matter

being taken up for final hearing since Advocate Mr. Prosper D'souza was appointed to represent her. The Appeal was, therefore, directed to be listed for final hearing on 29.09.2023.

It is in this background, the Appeal was taken up for final hearing.

5] I have heard Mr.Adwait Bhonde, learned counsel for the Appellant, Mr.Prospers D'souza, the appointed counsel for Respondent No.2 and Mr. Agarkar, the learned APP for the State.

On 21.08.2015, the father of the victim lodged a missing complaint with Chaturshrungi Police Station against unknown persons when he reported that the victim girl left home, on earlier day, by informing that she will return around 11.00 p.m. after attending college and classes. When the complainant called her on her phone on two occasions, he could not hear her voice, but on the next occasion her phone was switched off. He waited throughout the night on 20.08.2015 and searched for her with the relatives and friends, but since she could not be traced, he lodged the missing report.

The victim was left in the company of one Dhanshree Patil, friend of the mother of the victim and on 20.08.2015 the victim

had left the message about she coming late. The victim also forwarded a message to her mother that she will be residing at her friend's house and going to switch off her mobile.

Despite frantic search for the victim, her parents were clueless. Her mother, who was in Delhi on 20.08.2015, on her return received a phone call from an unknown number and the person gave his name as 'Omkar Dangat' (Appellant) and she was told that if she wanted to meet her daughter, she should come alone to an indicated place, without disclosing it to anybody. She was called near Sancheti Hospital and on reaching there, the mother found one person with the vehicle of the daughter and she was taken to Sasoon Hospital on the said vehicle. She was informed that her daughter, the victim is admitted in the hospital and when she met the daughter in the maternity ward, she was unable to speak and the complainant was also called in the hospital.

Upon reaching there, the parents were informed that the victim had delivered a male child. Upon probing, the victim disclosed that she was acquainted with the accused prior to one year when she was in 11th standard and he had established physical relationship with her and she conceived out of the said relationship.

The victim was discharged from the hospital and the offence was registered against the Appellant for committing sexual intercourse and she being a minor, he was also charged under Section 3 read with 4 and Section 5(j)(ii) read with Section 6 of the POCSO Act.

Upon completion of investigation, charge sheet was filed.

Charge was framed for kidnapping the victim aged 16 years and 11 months from the lawful guardianship of her parents without their consent and for repeatedly committing rape upon a minor girl.

The accused pleaded not guilty and expressed to undergo the trial.

6] In order to prove the charges levelled against the accused, the prosecution examined 8 witnesses, which included the victim herself (PW 2), her parents (PW 1 and PW 3), two medical experts and the Investigating Officers.

The prosecution also relied upon the statement of the victim girl recorded under Section 164 of the Cr.P.C. It also brought on record the DNA analysis of the baby which established that the accused and the victim are biological parents of the child.

7] The victim girl in her deposition before the Court stated that in the year 2015 her age was 16 years and she gave her date of birth to the Court as 05.09.1998. While in the dock, she brought her original birth certificate, which was taken on record and marked as Exhibit 23.

The victim girl deposed that she was taking education in 12th standard and in great detail she narrated about her acquaintance with the accused. She categorically stated that it is the accused who proposed her for love and she was taken at a place where he established physical relationship with her though she was not willing for such relationship. Thereafter, from October 2014 to February, 2015, there was physical contact frequently between them and when she realized that she had conceived, a Sonography was performed. As per the victim, she wanted to disclose about her pregnancy to her family members, but the accused objected and gave her some tablets, for terminating the pregnancy, but it did not work. She was taken to 4 to 5 doctors for performing abortion, but since it was opined to be not possible, it was not done.

As per the victim, she was compelled by the accused not to disclose the fact to her parents and therefore when the pain

started in absence of her mother in the house, she was taken by the accused to Jayabai Sutar Hospital, Kothrud, and since some problem arose, it was decided that they should visit Sasoon Hospital. She delivered a male child through normal delivery and the child was given to an institution in adoption.

It is the version of the victim that after the acquaintance, though she was reluctant to move ahead in relationship with him, he forced her to be in the relationship and since he used to visit her college and create a scene, she was compelled to follow him and permit the physical indulgence as it is her version that he used to assault and slap her.

In the cross-examination she admit the following facts :

“I have gone to the room of accused for about 30 times. There were physical contacts between us for about 10 to 15 times.”

“After first physical contact it was possible for me to disclose about the incident to my parent.”

“From October 2014 to February 2015 there were 3 sonographies of mine. When I had gone for sonography, accused had talk with the doctor and I also talk with doctor.”

She has further deposed in Para 11 as under:-

“11. It is not true to say that I was in love with accused and I wanted to marry him and hence I had not disclosed it to my parents. It is not true to say that I have told the accused that I was at marriageable age and hence there was consensual relationship with accused. It is not true to say that entire case was prepared because of the pressure of my parents. It is not true to say that I am deposing false due to pressure of my parents against the accused. It is not true to say that my father is present before the Court.”

8] Apart from the victim, the parents of the victim are also examined as witnesses.

PW 3 the mother of the victim girl in her examination in chief gave the date of birth of her daughter as 05.09.1998 and deposed that at the time of incident her age was 16 years.

9] The evidence of doctors is also relevant.

PW 4 is a Radiologist, to whom the victim was referred to obstetrics Sonography and he had undertaken the Sonography. He deposed that the victim visited the place where the Sonography was performed by him on two occasions, whereas, on third occasion, the Sonography was carried out by some other doctor.

He also deposed that at the time of second Sonography, she was 30 weeks pregnant and on the third occasion when the Sonography was carried out, she was found to have carried the pregnancy of 35 weeks.

PW 5, a Resident doctor at Sasoon Hospital, who was attached to gynecology department deposed that the victim girl who was brought by the accused was admitted in the hospital on 20.08.2015 and she had given her age as 19 years. She had narrated the history that she is married since one year and this is her first pregnancy.

In cross-examination, the doctor admit that the history is always taken from the patient and the patient had given her age as 19 years and therefore in the discharge sheet the name of the victim is scribed alongwith her age as 19 years.

10] The Investigating Officers are examined as PW 6, 7 and 8. PW 6 was attached to Chaturshringi Police Station as PSI, when the investigation was handed over to her. She recorded the statement of the victim in camera, in the presence of the doctor and her parents. She collected medical papers of the victim, where she had taken treatment and also obtained necessary

papers from Sasoon Hospital about her admission, delivery as well as sample of the victim and the child being collected in DNA kit.

In her evidence before the Court, she categorically assert to the following effect :-

“On 28-8-2015 I sent a letter to head master of Abasaheb Garware College for taking birth certificate of the victim. The letter in that regard now shown to me bears my signature. The said college issued true copy of the leaving certificate of the victim. I also obtained birth certificate of the victim from Pune Municipal Corporation. I included the same in police papers.”

11] The above evidence brought on record by the prosecution, prove its case that the victim was minor at the time of commission of offence and hence her consent in establishing physical relationship is of no consequence and as a proof of her minority, her birth certificate was exhibited as Exhibit 23. Her statement recorded by the Magistrate under Section 164 of the Cr.P.C. also came to be exhibited as Exhibit 24, where she had given the details of the relationship shared by her with the accused and as to the manner in which she was forced into the

relationship and how he compelled her to conceal the pregnancy from her parents.

It is the case of the prosecution that taking advantage of her young age, the accused forced himself into a relationship with her and extended the relationship in establishing physical contacts, and a minor girl was physically and sexually assaulted.

12] The learned advocate Mr.Adwaiat Bhonde in support of the Appeal, would raise an issue about the age of the victim girl as according to him, the prosecution has not proved by conclusive evidence that she was minor.

He would submit that the birth certificate was not included in the charge sheet and this is for the first time, when the victim stepped into the witness box, she produced the certificate and through her it was exhibited. He would deprecate such a practice and he would rely upon the decision of this Court in the case of *Bhagyashree Prashant Wasankar vs. State of Maharashtra, AIR OnLine 2021 BOM 1966*, where, it has been held that additional documents could be produced only by following procedure for further investigation as contemplated under Section 173(8) of the Code.

While commenting upon the birth certificate which has been produced by the victim and exhibited by the Court as a proof of her age, it is his submission, that the birth certificate by itself cannot be accepted as a conclusive evidence as it is necessary to have it connected through a vital link and his reliance is, on the decision of Bombay High Court, in the case of *Pramod Dattatraya Jadhav vs. State of Maharashtra (Criminal Appeal No.477 of 2015)* when, while dealing with the entry in a Kotwal book, it is held that if necessary and vital link is missing in the chain of evidence, then the entry in the kotwal book register as regards the date of birth in the particular case was not believed.

Apart, it is the submission of Mr. Bhonde that though Section 35 of the Indian Evidence Act make entries in the public record during performance of public duty relevant and such entry is admissible, the production of a certificate is not a conclusive proof that the entry in the birth certificate corresponds to the entry made in the register and he would submit that connection of the victim, whose age is in fact in issue, needs to be proved by adducing separate evidence, as to on whose information such an entry was made in the Register and since in the present case neither of the witness state that registration of the birth of

victim was made soon after her birth, in absence of such link to connect the victim to the entry in the Register, mere production of birth certificate is not sufficient as it is not a cogent piece of evidence to prove the age of the victim.

He would also rely upon the following case laws :-

- i] Birad Mal Singhvi vs. Anand Purohit
1988 Supp SCC 604,
- ii] Madan Mohan Singh & Ors. Vs. Rajni Kant & Anr.
AIR 2010 SCC 2933
- iii] Alamelu and Anr. vs. State Represented by Inspector
of Police, (2011)2 SCC 385.

Apart from this, the submission of Mr. Bhonde is, the father of the victim has not given her date of birth when he lodged the FIR, when the earlier opportunity was available to him to disclose the date of birth. No ossification test or any medical test was conducted by the prosecution to objectively decipher the age of the victim. Hence, his submission that the prosecution having failed to prove the foundational fact i.e. the age of the victim, provisions of POCSO Act are not attracted and consequently, presumption under Section 29 and 30 of the Act cannot be invoked.

13] The case of the Appellant is of consensual relationship between the duo and in fact it is suggested that the victim was intimately involved with the Appellant and the relationship was spread over for a period of 10 months and as according to her own version for about 30 times, she had visited his room, but she never made the relationship known to her family members. At the time when the child was delivered, it was the Appellant who was with her and the learned counsel would pose a question that despite the victim being pregnant of full 9 months, her family members did not notice any change in her and this is surprising. According to him, the victim projected herself to be major and of marriageable age and in fact there was an attempt to perform court marriage, but since they feared that the notices shall be sent to their respective homes, they refrained from doing so, but the Appellant, tied Mangalsutra and an understanding amongst them was that, they were married. Apart from this, it is also submitted that the victim represented to be major and during her medical examination, she had given her name by affixing the name of the Appellant as her husband and she signed on the medical papers with her new identity, and gave her age as 19.

In the light of above, submission of the learned counsel is

that Appellant deserve an acquittal as the prosecution has failed to prove the charge.

14] Dealing with the submission of the learned counsel that the birth certificate would not have been admitted in evidence, being tendered in the court at the time of deposition of victim girl, I do not feel that the counsel is correct in his submission. It is pertinent to note that the Investigating Officer PW 6 in her examination in chief has categorically deposed that she had forwarded letter to the college, in which the victim was persuading her education, for obtaining her birth certificate, but instead the college issued true copy of the Leaving Certificate and as such the Investigating Officer obtained birth certificate of the victim from Pune Municipal Corporation and she has categorically stated that she had included the same in police papers. Her statement cannot be doubted, as there is no cross-examination on the said point.

The birth certificate issued by Pune Municipal Corporation is exhibited as Exhibit 23, which gives the name of the father (PW 1) and mother (PW 3) of the child, born on 05.0-9.1998. It bear registration number and the document is exhibited, on being

produced by PW 2 who has deposed that it is her birth certificate.

Pertinent to note that this birth certificate is issued under Section 17 of the Registration of Births and Deaths Act, 1969 and it certifies that the information contained therein has been taken from the original record of birth, which is in the register of the Pune Municipal Corporation.

The above certification is indicative of the fact that there is an entry in the register of Pune Municipal Corporation in respect of a child being born to the persons named in the certificate and the birth certificate is issued on the basis of information recorded in the Register which is maintained to record the births in Pune Municipal Corporation. The certificate bears registration number and the date of registration is certified as 29.09.1998.

This entry is a relevant fact, in the wake of Section 35 of the Indian Evidence Act, 1872 as it amounts to a statement made under certain special circumstances. Section 35 of the Indian Evidence Act reads thus :-

“35. Relevancy of entry in public record or an electronic record made in performance of duty :- An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant

in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or [record or an electronic record] is kept, is itself a relevant fact.”

15] The entry in the birth register as recorded by the public authority is admissible evidence by virtue of aforesaid provision and it is a trite position of law that the examination of the person making such entry is not necessary.

The Supreme Court in the case of *Harpal Singh & Anr. vs. State of Himachal Pradesh*, (1981) 1 SCC 560, while dealing with a convict, sentenced to imprisonment on being convicted under Section 376 of the IPC, was confronted about the age of the girl and in Para 3, Justice Fazal Ali (as His Lordship was then) observed as under :

“3. In the instant case the prosecution has proved the age of the girl by overwhelming evidence. To begin with, there is the evidence of Dr. Jagdish Rai (PW 14) who is a radiologist and who, after X-ray examination, of the girl found that she was about 15 years of age. This is corroborated by Ex. PF, which is an entry in the admission register maintained at the Government Girls' High School, Samnoli (wherein

the girl was a student) and which is proved by the Headmaster. That entry states the date of birth of the girl as October 13, 1957. There is yet another document, viz., Ex. PD, a certified copy of the relevant entry in the birth register which shows that Saroj Kumari, who according to her evidence was known as Ramesh during her childhood, was born to Lajwanti wife of Daulat Ram on November 11, 1957. Mr. Hardy submitted that in the absence of the examination of the officer/Chowkidar concerned who recorded the entry, it was inadmissible in evidence. We cannot agree with him for the simple reason that the entry was made by the concerned official in the discharge of his official duties, that it is therefore clearly admissible under Section 35 of the Evidence Act and that it is not necessary for the prosecution to examine its author. From whatever angle we view the evidence, the conclusion is inescapable that Saroj Kumari was below 16 years of age at the time of the occurrence. Accordingly we agree with judgments of the courts below and see no merit in this appeal which is dismissed.”

16] In a recent decision of the Apex Court of *Manoj alias Monu @ Vishal Choudhary vs. State of Haryana and anr. (2022) 6 SSC 187*, while considering the plea of juvenility and determination of

age of the accused, once again the apex Court propounded upon the material which shall be taken into account for determining the age and as regards Section 35 of the Indian Evidence Act, it is categorically held that Section 35 requires following conditions to be fulfilled before a document is held to be admissible thereunder being :- 1] it should be in the nature of the entry in any public or official register; 2]it must set a fact in issue or relevant fact; 3] entry must be made either by a public servant in the discharge of his official duty or by any person in performance of specifically enjoying by the law of the country; 4] All persons concerned undisputedly must have access thereto.

While dealing with the medical report determining the age of a person, it has been held that it has been never considered by the Courts of law as also by the medical scientists to be conclusive in nature, as after a certain age it is difficult to determine the exact age of the person concern on the basis of ossification test or other tests and expert medical evidence shall not prevail on the ocular evidence. In such a circumstances it is held that the opinion is to assist the Court, as if he is not a witness of the fact and evidence given by the Medical Officer is really of an advisory character and not binding on the witness on

fact.

17] In this background the observations of the Apex Court to that effect in Para 23 reads thus :

“The statement of the doctor is no more than the opinion, the court has to base its conclusions upon all facts and circumstances disclosed on examining of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. An x-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert, but it can be by no means be so infallible and accurate test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon textbooks or medical jurisprudence and toxicology while determining the age of an accused. In this vast country with various latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform.”

In **Manoj** (*supra*), their Lordships construed the Family Register recording the year of birth of the Appellant as relevant, as this register was maintained under the UP Panchayat

Raj (Maintenance of Family Register) Rules, 1970 and it provided recording of the data family-wise and particulars of all the persons ordinarily residing in the village pertaining to Gaonsubha. The rules having been framed under Section 110 of the Act, contemplated allotment of one page to each family and any change in the family consequent upon the birth and death was required to be incorporated on such page and the charges to be laid before the next meeting of Grampanchayat.

Holding that the rules are statutorily framed in pursuance of the Act and the entries in the Register are required to be made by the Officials of the Grampanchayat as part of their official duty, when the High Court relied upon the Family Register as it was a document prepared in ordinary course of business of Grampanchayat, the Apex Court observed thus :-

“35. In Krishna Pal v. State of U.P., the learned Single Judge of the Allahabad High Court held that a family register is a public record in terms of the Evidence Act inasmuch as the same is prepared under the statutory provisions of Section 15(xxiii)(e) of the U.P. Panchayat Raj Act read with Rule 2, Rule 67, Rules 142 to 144 of the U.P. Panchayat Raj Rules, 1947. The family register is prepared under the Uttar Pradesh Panchayat Raj (Maintenance of Family

Registers) Rules, 1970. It is to be noted that Form (A) also records the date of death of a family member. There is yet another form, namely, Form (D) which is for registering the date of birth and death. Both these forms. therefore, record the date of death of a person and they are prescribed under the Rules. Needless to say that the Rules are framed by the State Government and the registers prescribed for particular purposes are notified under the Rules. Reference may be made to Section 110(ii) of the 1947 Act for the said purpose.

36. The Court held as under: (Krishna Pal case¹⁹, SCC Online All) "In my opinion, a presumption has to be drawn in respect of the said public document and it cannot be merely disbelieved if the Gram Panchayat Adhikari had not been produced to prove it. The copy of the family register is a public document and a presumption as to its genuineness is accepted under Section 79 of the Indian Evidence Act."

37. In Shiv Patta v. State of U.P., it was held that the family register is maintained in discharge of statutory duties under the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970. Similarly, date of death is maintained in discharge of statutory duty under the Registration of the Birth and Deaths Act, 1969 and it is a public document within the meaning of Section 74 of the Evidence Act, 1872. The certified copy of these documents is admissible in evidence under Section 77 of the Evidence Act and carry presumption of correctness

under Section 79 of the Act. The High Court held that in the absence of any evidence to prove that it was incorrect, its correctness is liable to be presumed under Section 79 of the Evidence Act, 1872.”

18] The learned counsel for the Appellant has relied upon *Madan Mohan Singh & Ors. vs. Rajni Kant and Anr. AIR 2010 SC 4932*, in particular observation in Para 13 to the following effect :-

13. In *State of Bihar and Ors. vs. Radha Krishna Singh and Ors. AIR 1983 SC 684*, this Court dealt with a similar contention and held as under :-

“Admissibility of a document is one thing and its probative value quite another-these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.... Where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has “a statutory flavour in that it is given not merely by an administrative officer but under the authority of a Statute,

its probative value would indeed be very high so as to be entitled to great weight.”

The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.”

The above observations are particularly made in respect of a document not covered under Section 35 of the Indian Evidence Act as it refer to a public document i.e. School Register, voter list etc. and though it is held that the entries made in official record by an official or person authorized in performance of official duties are concerned, they may be admissible under Section 35 of the Indian Evidence Act , but the Court has right to examine, but it is further observed as under :

“16. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of

information. The entry In School Register/School Leaving Certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

17. For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc., the entry in the school register is to be discarded. (Vide: Brij Mohan Singh v. Priya Brat Narain Sinha and Ors., AIR 1965 SC 282; Birad Mal Singhvi v. Anand Purohit, AIR 1988 SC 1796: Vishnu v. State of Maharashtra (2006) 1 SCC 283: (AIR 2006 SC 508: 2005 AIR SCW 6149); and Satpal Singh v. State of Haryana, JT 2010 (7) SC 500): (2010 AIR SCW 495).”

19] The Judgment in the case of Pramod Dattatraya Jadhav vs. The State of Maharashtra (Criminal Appeal No.477/2015) relied upon by the learned counsel arises out of a POCSO case, when the victim was alleged to be taking education in 9th standard and

it was the case of the prosecution that on the date of incident, she was about 15 years of age and hence a child.

20] In order to prove the age of the victim, the prosecution relied upon the oral evidence of her father, as well as the evidence of victim herself, who had given her date of birth as 20.10.1999. In addition the prosecution placed on record the birth certificate issued by the registering authority i.e. Kopargaon Municipal Council, Kopargaon and the certificate exhibited reflected the names of the parents.

The argument was advanced on behalf of the accused that the birth certificate had recorded the name of the father of child as Ganesh, son of Rangnath and name of the mother as Sunita, wife of Ganesh., PW 1 the father Ganpat had candidly stated in his cross-examination that his name is not Ganesh, but his name is Ganpat and the prosecution had not adduced any evidence to show that the victim girl was born at Kopargaon as neither PW 1 nor PW 2 deposed that she was born at Kopargaon.

It was argued that the name of the father of the victim child in the birth certificate is Ganesh and not Ganpat and even Ganpat PW 1 did not speak of the name of his wife.

In these circumstances, it is recorded by the learned Judge that it was necessary on part of the prosecution to bring on record the name of the mother of PW 2 so as to demonstrate that the birth certificate relates to her and it was further held that mere filing of birth certificate by a person is not of any assistance to the prosecution until and unless and until a link evidence is adduced to demonstrate that such birth certificate relates to the victim whose age is sought to be proved by the prosecution and identify of the person under the birth certificate must be established by adducing corroborative evidence.

There can be no dispute about the proposition laid down that mere birth certificate cannot be an evidence to prove the age of the particular person unless it is established that the birth certificate is in respect of a person whose age is in question.

21] In the present case, it is the victim who herself appeared before the Court and produced her own birth certificate which has recorded the name of PW 1 as her father, and PW 3 as her mother.

This birth certificate was also obtained by the Investigating Officer from Pune Municipal Corporation and included in the

police papers. Since this birth certificate was produced by PW 2 when she was under oath, the same was exhibited, and hence there was no propriety for proving the same through the Investigating Officer, who has already deposed that he had obtained copy of the birth certificate and compiled it in the charges sheet.

Admittedly, the birth certificate stand on a different footing than a school admission register, school leaving certificate, transfer certificate or any other document depicting the date of birth of a person whose date of birth is under cloud. The aforesaid documents necessarily are issued by distinct authorities for different purposes.

Bonafide certificate, transfer certificate, is prepared by taking entries on the basis of some document and in the column of date of birth, when an entry is taken, it must be necessarily be taken by a person on production of the original birth certificate or the information supplied and expected to be a truthful version of the date of birth. Hence, the date of birth mentioned in the transfer certificate etc. would have no evidentiary value, unless the person who made the entry of gave the date of birth, is examined. Similar is the case of bonafide certificate, admission

register etc. The age of a person as recorded in the school register or otherwise, may be used for various purposes, namely, for obtaining admission, for obtaining appointment ; for contesting election; registration of marriage; or even at times for litigating before civil forum for eg. necessity of being represented in the court of law by a guardian or when a Suit is filed on the ground that the Plaintiff being a minor was not appropriately represented or any transaction made on his behalf was void as minor. In all such cases, the person who has taken an entry in the said document as regards the date of birth would have to depose as he will be necessarily a privy to the basis on which the date of birth is recorded. However, this situation do not apply to a birth register which bear the relevancy in the wake of Section 35 of the Indian Evidence Act. There is no need to adduce any link evidence to demonstrate that the certificate belong to victim, as she herself produced the certificate where she is shown to be a daughter born to PW 1 and PW 3, on the given date.

I have no difficulty in accepting the case of the prosecution that the girl was minor and the prosecution has established the said circumstance by adducing sufficient evidence.

22] Dealing with the submission of the learned counsel that the victim projected a person to be major and of marriageable age and in fact there was an attempt to perform court marriage, but for some unavoidable reason, they chose not to proceed ahead with it, but instead the relationship was continued on strength of the sacred thread and that is why the Appellant established physical relationship with the victim and she conceived out of it. Though she has given her age as 19 years, it is obvious that it was to avoid any questions being asked when she visited the hospital for the purposes of sonography and in order to enable the termination of pregnancy. The victim was asked to give her name as Mrs. X Omkar Dangat, wife of the Appellant. She has clearly deposed that whenever they went for Sonography, the coupled projected themselves as husband and wife so as to avoid any unnecessary quizzing on the pregnancy.

23] The Protection of Children from Sexual Offences Act (POCSO) was enacted by the Parliament in the year 2012 with an intent to effectively address the evil of sexual exploitation and sexual abuse of children.

India, which has largest population of children in the world,

has guarded protection of children in its Constitution and has mandated the adoption of the international conventions and in particular UN convention, India being a signatory to it.

Taking note of the fact that child sexual abuse was prosecuted under various provisions of the IPC, but since it was found to be not sufficient and suffered from several drawbacks and the provisions did not effectively protect the child due to various lacunas and loopholes ingrained in the Code itself, a need was felt to enact a special enactment which is gender neutral and cover its forms of sexual abuse including, but not limited to sexual harassment, penetrative assault and non penetrative assault. It also contemplated establishment of special Courts for the trial of such offences and matters related to it.

24] The constitution of India specifically provide for prevention of exploitation of youth, and make it imperative for enactment of laws that would serve best interest and well being of a child by treating, it as of paramount importance at every stage, to ensure physical, emotional, intellectual and social development of a child. The parties to the convention on the 'Rights of Child' are required to undertake all appropriate national, bi-lateral and multi-lateral

measures to prevent exploitative use of children in prostitution or other unlawful sexual practices.

The Government of India acceded to the convention of the rights of a child, adopted by the General Assembly of United Nations, which prescribe set standards to be followed by all state parties in securing the best interest of the child.

Article 15 of the Constitution also confer power upon the State to make special provision for children and further Article 39 provide that the shall in particular direct its policy towards securing that the tender age of the children is not abused and their youth and childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

25] The drastic provisions in the Act which punish the species of offences, with the genus of sexual assault and the offences invite punishment which may extend to a term not less than 20 years but extend to imprisonment for life, meaning imprisonment for reminder of natural life of a person, so that it would act as deterrent and prevent commission of offences in future.

26] The present case is a fit case where the accused deserve to be treated with stern hand, as he manipulated a minor girl, established physical relationship with her and made her pregnant. Taking into account the evidence that has been brought on record by the prosecution, the POCSO Judge has rightly convicted the Appellant and sentenced him to undergo imprisonment for 10 years, though the learned Judge has shown leniency and hence the said Judgment of conviction and imposition of sentence do not warrant any interference.

By upholding the Judgment dated 09.07.2019, in Special Sessions Case No.371 of 2015 same, the Appeal is dismissed.

In the wake of above, Interim Application No.3110/2023 also stand disposed off.

[BHARATI DANGRE, J]