



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

CRIMINAL APPEAL NO. 1201 OF 2019

Dayaram s/o. Nawalsing Barela,
Age : 33 years, Occu : Agril.,
R/o. Narwade, Tq. Chopda,
Dist. Jalgaon

...Appellant

Versus

The State of Maharashtra

...Respondent

.....

Mrs. Vaishali A. Shinde (More), Advocate for the Appellant
(appointed through Legal Aid)

Mrs. V. S. Chaudhari, APP for the Respondent / State

.....

**CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

RESERVED ON : 16TH JANUARY, 2024

PRONOUNCED ON : 01ST FEBRUARY, 2024

JUDGMENT : [Per : Neeraj P. Dhote, J.]: -

. This is the Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') against the Judgment dated 02.06.2017 passed by the Special Judge (POCSO Act), Amalner, in Special (POCSO) Case No.15 of 2015 convicting the Appellant for the offences punishable under Section 376 (i) and (f) and Section 506 of the Indian Penal Code, 1860 (for short, 'I.P.C.') and under Section 5 (m) and (n) read with Section 6 of the

Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act') and sentencing him to undergo Life Imprisonment with fine of Rs.5,000/-, in default to undergo Simple Imprisonment for one (01) month for the offence punishable under Section 5 (m) and (n) read with Section 6 of the POCSO Act and to suffer Rigorous Imprisonment for two (02) years and to pay the fine of Rs.1,000/-, in default to suffer Simple Imprisonment for one month for the offence punishable under Section 506 of the I.P.C. No separate sentence is awarded for the offence of rape.

2. Heard the learned Advocate for the Appellant and the learned APP for the State. Perused the paper-book.

3. The Prosecution's case as seen from the Police Report is as under:-

3.1. The Informant was the Sarpanch of the village Junegaon, Tal. Chopda, Dist. Jalgaon. The Appellant is resident of the said village. He resides with the victim, who is his daughter. The Appellant's wife has deserted him. On 07.10.2015 Jankabai (PW No.4) informed her (the Informant) that her niece i.e. victim, was crying loudly in the night as the Appellant was beating her. She (PW No.4) informed that the Appellant had gone out. The Informant,

Jankabai and other villagers went to the house of the Appellant, where they saw that the victim was weeping. On enquiry with her, she told them that in the night of 06.10.2015 when she was sleeping, the Appellant came home at 09:00 p.m. in an inebriated state and switched off the lights of their hut and raped her by removing her clothes and threatened by the Scythe. The victim told them that prior to that the Appellant had raped her from time to time and as her mother was not there, she could not disclose the incident. The Informant and some of the villagers went to the Police Station and lodged the report and Crime came to be registered against the Appellant.

3.2. During the investigation, the Spot Panchanama was done, victim was sent for medical examination, the statement of the victim and the other villagers came to be recorded, the clothes of the victim and the Appellant came to be seized, the Appellant came to be arrested, the Appellant was sent for medical examination, the document regarding age of the victim was collected from the school, the Articles seized during the investigation were sent for chemical analysis and on completion of the investigation, the Appellant came to be charge-sheeted.

4. The learned Trial Court framed the Charge against the Appellant for the aforesaid offences, under which he has been convicted, vide Exh.3 to which the Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all ten (10) witnesses and brought on record certain documents. After the prosecution closed its evidence, the Appellant's statement came to be recorded under Section 313 (1)(b) of the Cr.PC. The Appellant claimed innocence and false implication. Thereafter, the Appellant is convicted by the impugned Judgment.

5. It is submitted by the learned advocate for the Appellant that the prosecution has not proved that the victim was minor. It is further submitted that, the evidence of the victim is unbelievable and not corroborated by medical evidence. He further submitted that the Informant was having grudge against the Appellant due to his habit of drinking liquor and creating chaos in the village and any how she wanted the Appellant to be behind the bars. It is further submitted that the evidence brought on record by the prosecution is not concrete and considering the nature of the punishment for the offences, strict proof is necessary. It is submitted that, the learned Trial Court has committed an error in convicting and sentencing the Appellant and the same be set aside.

6. Per contra, learned APP submitted that there is no reason for the victim to falsely implicate her father. It is submitted that the evidence brought on record by the prosecution establishes the Charge and the learned Trial Court has rightly passed impugned Judgment and order and hence, prayed for dismissal of the Appeal.

7. It is the case of prosecution that the victim was minor at the time of incident. One of the Charge levelled against the Appellant is under the POCSO Act. As per Section 2 (1)(d) of POCSO Act, “child” means any person below the age of eighteen (18) years. The provisions of Section 34 of the POCSO Act provide the procedure in respect of the determination of age. The Hon’ble Supreme Court of India in **P. Yuvaprakash v. State Rep. by Inspector of Police**, reported in **AIR 2023 S.C. 3525** has considered the said provision of Section 34 and one of the points for consideration was the victim’s age. The relevant observations are reproduced below:

“11. Before discussing the merits of the contentions and evidence in this case, it is necessary to extract Section 34 of the POCSO Act which reads as follows:

“34. Procedure in case of commission of offence by child and determination of age by Special Court. – (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection

of Children) Act, 2015 (2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination. (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.”

12. In view of Section 34 (1) of the POCSO Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

“94. Presumption and determination of age. – (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the

order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a

document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in *Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors.*,³ this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in *pari materia*) with Section 94 of the JJ Act, and held as follows:

“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided *prima facie* on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.”

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in *Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors*⁴ that:

“Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant

change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In **Abuzar Hossain @ Gulam Hossain v State of West Bengal**⁵, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.”

8. Coming to the case in hand, the prosecution examined PW No.9 - Kailas Uttam Magar to prove the age of victim. His evidence, which is at Exh.29, show that he was working as Head Master at Adgaon High School, Adgaon since the year 2011. On 21.06.2014 student xxx (victim) was admitted in the school in the 5th Std. At that time, her birth date was disclosed as 01.06.2003. His evidence show that the said information about the date of birth was given by the parents of the pupil and accordingly entry was made in the general register. His evidence show that the said entry was recorded in his handwriting and the copy of the relevant page from the original General Register was at Exh.30. The extract from the said School General Register and *bona fide* certificate are brought on record at Exhs.31 and 32, respectively. In cross-examination, it has come that the parents of xxx (victim) did not produce the copy of the

birth certificate.

9. The evidence of above referred witness clearly establishes that the entry of xxx victim's date of birth in the said school record was not based on the birth certificate. Therefore, said evidence in respect of Age of the Victim is discarded. The Appellant in his statement under Section 313 of the Cr.P.C. denies the evidence of this witness that the said date of birth of victim was disclosed by the parents. It is needless to state that the date of birth / age is to be proved in accordance with law. Thus, without hesitation it is held that the prosecution has failed to prove the date of birth and age of the victim as required by law. All in all, the prosecution failed to establish that the victim was the child at the time of the incident.

10. Star witness of the prosecution is the victim girl. She was examined as PW No.3 at Exh.16. The note made by the learned Trial Court in the said deposition of victim show that her evidence was recorded without administering oath as she did not know the sanctity of oath. Her evidence show that the Appellant is her father and at the time of the incident she was residing with the Appellant. Except her and the Appellant, there was nobody residing in their house. She deposed that the incident took place prior to five (5) to six (6) months when, the Appellant came home at 09:00 p.m. under

the influence of liquor, turned off the light, removed her clothes and committed rape on her. Her evidence show that she opposed the same, but the Appellant threatened her by showing Scythe and whenever she tried to rescue herself, he caught hold of her. She further deposed that the accused had committed rape on her since last four (4) to five (5) months from the incident in question and used to threaten her by showing the Scythe and therefore, she did not disclose to anybody. According to her, in the morning Munnabai and Radhabai took her to the house of Hirabai where the Police Patil was also called and thereafter they went to Chopda Police Station. She was referred for the medical examination. There were stains on her clothes and the clothes were handed over to the police which were at Article 'A' to 'D'. She deposed that, her statement was recorded before the Magistrate at Chopda.

11. The evidence of PW No.2 – Mahadev Manik Fad show that the spot panchanama at Exh.15 was drawn in his presence and he acted as a panch. His evidence show that the spot of incident was at village Narwade, Tal. Chopda and the spot of incident was hut and it was shown by the informant (PW No.1).

12. The scrutiny of the evidence of PW No.1 - Lilabai Dilip

Bhil, who was the Sarpanch of the said village Narwade at the relevant time, show that opposite to the house of the Appellant there was a tar road which proceeds towards village Vadati, there was Aashram school towards eastern direction of the road, there were houses of the persons from Pawara community towards western direction of the road which were constructed by making encroachment on the public property and since last 20-25 years the Appellant was residing at the said spot along with his father, brother and other relatives. The evidence of PW No.1 Lilabai show that her house was about 4 to 10 minutes by walk from the house of the Appellant.

13. The evidence of PW No.4 - Jankabai Nandu Barela show that the Appellant was her brother-in-law, who used to reside with the victim and the Appellant's wife resides at her paternal home. Her evidence show that she resides behind the house of the Appellant since last 20-25 years.

14. The evidence of PW No.10 - Kailas Fakirba Wagh, the Investigating Officer show that the hut i.e. spot of incident was of 10 ft x 12 ft size and was a *kaccha* hut having the door made from sticks. His evidence further show that the house of Radhabai Gulab

was opposite to the house of the Appellant and there was a passage admeasuring around 2 ½ to 3 ft. between the houses of the Appellant and Radhabai.

15. From the above evidence of PW No.1 - Lilabai, PW No.2 - Mahadev, PW No.4 - Jankabai and PW No.10 - Kailas, it is clear that the house of Appellant which is the spot of incident is not an isolated place. It is situated in the village having other houses. Even the close relative of the victim, PW No.4 – Jankabai, was residing behind the house of the Appellant. If such was the location of the spot of incident, it is unlikely that the victim was repeatedly raped by the Appellant for about four (4) to five (5) months prior to the incident and she kept mum. The evidence of victim show that the Appellant had threatened her with Scythe and therefore she kept mum and did not disclose the act of rape to anyone. Her evidence show that, *‘whenever she tried to rescue from the accused, he used to caught hold her’* was an improvement from her previous statement. If this was so, according to her even at the time of the last incident of rape, she was threatened by the Appellant with Scythe, however at that time she disclosed about the incident to Munniabai, PW No.4 - Jankabai, PW No.1 – Lilabai and Radhabai when they came to her house. It is nowhere the case of prosecution that during all such

times the victim had tried to approach PW No.4 who was her relative. There is nothing in the evidence that all the time the Appellant used to be present in the house and did not allow the victim to go out of the house. This becomes clear from the evidence of PW No.1 - Lilabai where she deposed that when she along with Jankabai, Munnabai and Police Patil had gone to the house of the victim on 07.10.2015 at about 07:00 a.m., the Appellant was not present in the house. Even the evidence of PW No.5 Vaishali Avinash Dhangar, who was the Police Patil of the village Narwade, show that when she went to the house of the victim along with PW No.1 - Lilabai, PW No.4 – Jankabai, Radhabai, Munnibai, the Appellant was not present in the house. There is no evidence that the victim was kept in captivity and therefore she could not approach the people in the locality.

16. As per the victim, the Appellant came home under the influence of liquor and committed rape on her. The evidence of PW No.1 – Lilabai, who was the Sarpanch of village Narwade, show that the accused was addicted to liquor and was habituated to raise shouts under the influence of liquor, which caused nuisance to the public from the said locality. When the Appellant was habituated to liquor to such an extent and had come home under the influence of liquor, the version of PW No.3 victim that she was raped by him when he

was under the influence of liquor is required to be seen with doubt.

17. Evaluation of above discussed evidence creates reasonable doubt about the prosecution's case of rape on the victim in the intervening night of 06th and 07th October, 2015 and such repeated acts prior to four (4) to five (5) months from the date of incident. The place of residence of the victim was Hut, having the door made of sticks and the relatives of the Appellant were residing in the vicinity. The victim had all the opportunity to disclose such act of the Appellant to her relatives. Had really been that she was under the threat, she would have never disclosed anything to the witnesses who claimed to have seen her weeping in the morning of 06.10.2015 and informing them about the incident when they went to her house.

18. There are other aspects to the matter as well. Evidence of PW No.1 – Lilabai show that Munnibai Gatalu Bhil, Fulsing Bhil, Mangal Bhil and Yuvraj Bhil had complained against the Appellant to her. The evidence of PW No.10 – Kailas Wagh, Investigating Officer show that in response to his letter at Exh.43 addressed to the Grampanchayat for providing the extract of the house showing the ownership was informed by the Grampanchayat vide Exh.44 that

there was no house in the name of the Appellant and the house was constructed by making encroachment. Suggestion was given to PW No.1 Lilabai (Sarpanch) that the Appellant had come to her with a request to allot him a house under the Indira Aavas Yojana and she refused the same. In his statement, the Appellant while answering the question no.72 as to why the witnesses were deposing falsely against him, he stated that 'he constructed the house on the government property and PW No.1 - Lilabai had demolished the same, thereafter he had constructed the house, PW No.1 and others used to harass his wife, therefore, he had kept her at maternal home and they were intending to remove him from the said village and they brought him to the police station'. He further stated that 'PW No.1 also threatened to his daughter (victim), therefore due to pressure she deposed against him.'

19. Coming back to the evidence of PW No.3 Victim, she deposed that quarrels used to take place between PW No.1 Lilabai and the Appellant on account of consumption of liquor. This makes it clear that the relations between PW No.1 Lilabai and the Appellant were not cordial. Her evidence show that PW No.1 - Lilabai / informant and Munnabai accompanied her to the police station and she attended the court along with PW No.1 – Lilabai. The possibility

of tutoring the Victim by PW No.1 Lilabai cannot be ruled out.

20. The evidence of PW No.4 – Jankabai, who is the wife of Appellant's brother and stays in the same village, show that prior to two years of the incident, the Appellant used to reside at Kapadne. Suggestion is given that there was quarrel between the Appellant and the Munnibai, therefore, he was driven out of the village. As already discussed, the evidence available on record indicate that the act of the Appellant of raising shouts under the influence of liquor caused the nuisance to the persons from the locality. It is to be noted that the Appellant was produced before the police by his brother.

21. The prosecution has brought on record the medical evidence through PW No.6 Dr. Pankaj Raman Patil. His evidence show that on 07.10.2015 he was attached to the Sub District Hospital, Chopda as a Medical Officer and the victim was referred to him by the police and she was examined by him and other doctors. His evidence show that there was rupture of hymen and he collected the samples of scalp hair, clippings of nails of both hands, oral swab, blood for grouping and DNA analysis, public hair, two vulval swabs and two peri-anal swabs and referred the samples for chemical analysis and the victim was referred to the Civil Hospital, Jalgaon for x-ray and sonography examination of abdomen and she was given

the treatment for prevention of sexually transmitted infectious diseases. His evidence show that he filled up the proforma for medico legal examination of the victim in his handwriting, which was at Exh.20. His evidence show that the hymen may be ruptured due to penetration and at the time of the first penetration it causes rupture of hymen and bleeding. However, if the penetration is repeated, there may not be bleeding, but hymen appears in a torn condition. In the cross-examination of this witness, it has come that page no.10 to 13 of Exh.20 do not reflect visible injuries. It has come that rupture of hymen is possible, if the girl engages herself in cycling or climbing trees. His evidence show that he did not mention the age of rupture and did not notice bleeding or fresh injury on the vaginal part of the victim. He deposed that he cannot state that if minor girl is forcibly raped for the first time, in that case she may receive injuries to her vaginal part.

22. Perusal of the Exh.20 which is filled in proforma for medico legal examination of victim of sexual violence show that, post incident the victim had not taken bath and was not douched. The column no.17 of Exh.20 which reads 'examination for injuries on the body if any' do not show any injury. Sub para-4 of

para no.21 which is titled as 'Genital and Anal evidence' show that the vaginal swabs 'for semen examination and DNA testing' and 'vaginal smear (air-dried) for semen examination' were not taken and the reason mentioned is '*not allowing*'. Para no.22 which is titled as 'provisional medical opinion' reads as under:

"22. Provisional medical opinion

I have examined (name of survivor) ~~xxx~~ M/F/Other ...
 aged 11 years reporting (type of sexual violence and
 circumstances) .. **15 hours** XYZ days / hours after
 the incident, after having (bathed/douched etc.) -NA- My
 findings are as follows:

- . Samples collected (for FSL), awaiting reports
- . Samples collected (for hospital laboratory)
- . Clinical findings . Additional observations (if
 any) **Refer to CHT for XYZ & (not legible)"**

23. The above discussed medical evidence do not indicate the signs of sexual assault on the victim. Though the hymen was found to be torn, the said witness has given other reason for causing rupture of hymen. Medical evidence, therefore, is of no assistance for the prosecution to prove the charge.

24. In the evidence of PW No.10 Kailas Wagh, Investigating Officer, report of the chemical analysis are brought on record at Exh.47 to 49. Perusal of the said reports show that the blood group of the Appellant was 'A' and the blood group of victim was 'B'. It

further show that no semen was detected on Exh.1 (perianal swab), Exh.2 (vaginal swab), Exh.3 (buccal swab) and Exh.9 (pubic hair of the victim). It further show that no blood was detected on Exh.4 (Scalp hair of the victim), Exh.5 & 6 (nail clippings of the victim). The CA report at Exh. 48 mentions that 'opinion regarding presence of foreign hair in Exh. 9 (public hair of the victim) cannot be given as it is unsuitable for examination. The report further show that no blood was detected on Exh.'A' – frock, Exh.A-1 Knicker, Exh.A-2 Slacks, Exh. A-3 Scarf, Exh. B half pant, Exh.B-1 Half shirt, Exh.B-2 Underwear. It further show that no semen was detected on Exh.A frock, A-2 Slacks, Exh. A-3 Scarf, Exh. B half pant, Exh.B-1 Half shirt, Exh.B-2 Underwear and Exh. C1 quilt.

25. Whereas the CA report at Ex.47 indicate that the quilt at Exh. 'C' were having few blood stains of human (inclusive) ranging from about 0.1 cm to 1 cm in diameter at places and three semen stains, two semen stains were each of about 2 cm in diameter on middle portion and another one semen stain is of about 3 cm in diameter at one end of human blood group 'A' and Exh. A-1 Knicker had few semen stains ranging from about 1 cm to 1.5 cm in diameter on middle portion of human blood group 'A' and human blood (inclusive) on Exh. C-1 (Quilt). However, the said report showing

blood and semen by itself will not be sufficient to hold that the Charge is proved. The evidence of panch witness nowhere show that the Articles were sealed. Under such circumstances, the said reports of Chemical Analysis are of no assistance for the prosecution.

26. The above discussed evidence available on record do not prove that the Appellant had committed rape on the victim. The substantive evidence of the witnesses is not concrete. The corroborative evidence in the nature of medical evidence do not support the case of prosecution. The prosecution has failed to establish the Charge against the Appellant. The Appellant deserves acquittal. Hence, we proceed to pass the following order.

ORDER

- (i) The Appeal is allowed.
- (ii) The Judgment and order dated 02.06.2017 passed by the Special Judge (POCSO Act), Amalner, in Special (POCSO) Case No.15 of 2015 convicting and sentencing the Appellant is hereby quashed and set aside.
- (iii) The Appellant is acquitted of the offences punishable under Sections 376 (i) and (f), 506 of the Indian Penal Code and under Section 5 (m) and (n) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

- (iv) The fine, if any, paid by the Appellant, be returned to him.
- (v) The Appellant be released forthwith, if not required in any other crime.
- (vi) Muddemal be dealt with in accordance with law.
- (vii) Record & Proceedings be sent back to the Trial Court.
- (viii) The fees of Advocate appointed for the Appellant, is quantified at Rs.7,000/- (Rupees Seven Thousand Only) to be paid by High Court Legal Services Sub Committee, Aurangabad.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP