



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 236 OF 2022

APPELLANT : Roshan S/o. Manohar Sahare, Aged
27 Years, Occu: Panipuri Seller, R/o.
Girad, Tah. Samudrapur, Dist.
Wardha.

//VERSUS//

RESPONDENTS : 1. The State of Maharashtra, through
P.S.O. Girad, Tah. Samudrapur, Dist.
Wardha.

Amendment as per Hon'ble Court's Orders dt.
21.06.2022 & 1.07.2022. 2. XYZ (Victim), through informant in
Crime No.2/2020 registered with
Police Station, Girad, Tah.
Samudrapur, District Wardha.

Mr. S.S. Das, Advocate for the Appellant.
Mr. P.P. Pendke, APP for Respondent No.1/State.
Ms. S.H. Bhatia, Advocate (appointed) for Respondent No.2 is
absent.

CORAM : G. A. SANAP, J.
DATED : 18th OCTOBER, 2024.

ORAL JUDGMENT

. In this appeal, challenge is to the judgment and order
dated 31.01.2022, passed by the learned Additional Sessions Judge,

Hinganghat, whereby the learned Judge convicted the appellant of the offences punishable under Sections 376(2)(j), 376(2)(n) and 376(3) of the Indian Penal Code, 1860 (for short, “IPC”) and under Section 5(l) r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, “POCSO Act”), and sentenced him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default to suffer rigorous imprisonment for three months for the offence punishable under Section 376(2)(j)(n) of the IPC. No separate sentence has been awarded for the proved offences punishable under Sections 376(3) of the IPC and under Section 5(l) r/w Section 6 of the POCSO Act.

02] BACKGROUND FACTS:

The informant (PW-1) is the mother of the victim-girl. The crime was registered on her report lodged on 3rd January, 2020. The case of prosecution, which can be gathered from the report and other materials, is that, on the date of the incident, the victim was around 13 years of age. The incident of penetrative sexual assault occurred on 2nd January, 2020. On the date of the incident, there was rain, and therefore, the informant did not go for

work on the field. On that date, on account of the rain, the victim also did not go to the school. It is stated that at about 3:00 p.m., the informant went to attend the *Bachatgat* meeting and returned back at about 6:00 p.m. At that time, she found that the victim was sleeping in the house. The husband of the informant told her that, after about 5:00 p.m., he saw that the appellant was holding the hand of the victim and dragging her towards the Government Hospital. The appellant, after seeing the father, left the victim and ran away. The father brought the victim back to the house.

03] It is stated that, after narration of the above incident by her husband, the informant made an enquiry with the victim regarding the matter. The victim told her that she had a love affair with the appellant. The victim told her mother that on 2nd January, 2020, in the noon, the appellant forcibly took her to the hillock and committed a forcible sexual intercourse with her. The victim told her parents that 2-3 times in the past, the appellant had committed sexual intercourse with her. The informant, on being apprised of this incident by the victim, deliberated upon this incident with her family members and the Chairperson of the village Tantamukti Committee. On 3rd January, 2020, the informant, victim, and her father went to Girad Police Station and

lodged the report.

04] On the basis of this report, a crime bearing No.2/2020 was registered with Girad Police Station. The initial investigation was carried out by PW-7. PW-7 recorded the First Information Report (FIR) and seized the cloths of the victim. Further investigation was carried out by PW-14. After recording the FIR, the Investigating Officer referred the victim for medical examination. The appellant was arrested and referred for medical examination. The Investigating Officer recorded the statements of the witnesses. The statement of the victim was recorded by PW-7. Similarly, the statement of the victim was recorded by the learned Judicial Magistrate First Class, Samudrapur, under Section 164 of the Code of Criminal Procedure, 1973 (for short, "Cr.PC"). The samples had been sent for CA and DNA analysis. After completion of the investigation, the charge-sheet was filed against the appellant.

05] Learned Additional Sessions Judge framed the charge against the appellant. The appellant pleaded not guilty. His defence is of false implication in this crime. The prosecution, in order to

bring home the guilt of the appellant, examined 14 witnesses. The learned Judge, on consideration of the evidence, held the appellant guilty of the charge and convicted and sentenced him as above. The appellant, being aggrieved by this judgment and order, has come before this Court in appeal.

06] I have heard Mr. S.S. Das, learned advocate for the appellant and Mr. P.P. Pendke, learned APP for respondent No.1/State. Perused the record and proceedings.

07] Learned advocate for the appellant submitted that the prosecution has not adduced cogent and concrete evidence to prove the birth date of the victim. Learned advocate submitted that the birth certificate of the victim at Exh.22 has not been properly proved, and therefore, the learned Judge was not right in relying upon this birth certificate to record a finding on this point. Learned advocate further submitted that, while lodging the report, the informant had not stated the birth date of the victim. The prosecution has not examined any witness from the Gram Panchayat Office to prove the birth certificate.

08] Learned APP submitted that the victim, in her evidence as well as in her statement, has categorically stated that her birth date is 25th March, 2006. It is submitted that the evidence of the informant and the evidence of the father of the victim on this point is consistent. It is pointed out that, in the report at Exh.24, the informant had categorically stated that, on the date of the incident, the victim was 13 years of age. Learned APP submitted that the birth certificate produced on record is a public document. This documentary evidence was collected by the Investigating Officer during the course of the investigation. It is submitted that it is not the case of the appellant that this documentary evidence in the form of a birth certificate was brought into existence just for the sake of supporting the case of the informant.

09] I have minutely perused the record and proceedings. The informant, in her report, has categorically stated that, on the date of the incident, the victim was 13 years of age. The informant, in her substantive evidence, has stated that the birth date of the victim is 25th March, 2006. The birth certificate was exhibited during the course of the evidence of the informant. PW-3 is the victim. In her evidence, she has stated that her birth date is 25th March, 2006. PW-11 is the father of the victim. He has stated that, on the date of

the incident, the victim was 13 years of age. Apart from the age of the victim, the father has categorically stated the age of his two children. He has further categorically stated that the birth date of the victim is 25th March, 2006. The statement of the victim was recorded by the learned Judicial Magistrate First Class, Samudrapur. The victim, during the course of her preliminary enquiry by the learned Magistrate, narrated her birth date as 25th March, 2006. It is undisputed that, on the date of the incident, the victim was studying in VIII Standard.

10] In the backdrop of the above oral evidence, it is necessary to consider the birth certificate at Exh.22. It is undisputed that this certificate was obtained by the Investigating Officer during the course of the investigation. This birth certificate was issued by the Registrar, Birth and Death Registration Office, Girad, on 6th January, 2020. The report, in this case, was lodged on 3rd January, 2020. This birth certificate, which is a certified copy from the public record, has a presumptive value. Perusal of the contents of this birth certificate does not leave any manner of doubt in my mind about the authenticity of this document. The birth certificate was compiled in the charge-sheet being the most important document in the case of the prosecution. Perusal of this

birth certificate would show that the names of the parents of the victim have been recorded therein. The parents, at the time of the birth of the victim, had been residing at village Girad. As per Exh.22, the victim was born at P.H.C., Peth. The entry of the birth and the birth date of the victim was registered with the Registrar on 1st April, 2006. The registration entry number is 07. Perusal of this document would show that it was issued on the basis of the public record maintained with the Competent Authority. Perusal of the cross-examination of the witnesses would show that the authenticity of this document has not been challenged at all. The Investigating Officer had no reason to manipulate such a record after registration of the crime. In my view, such inference also cannot be drawn in this case. This evidence, in my view, is sufficient to prove that, on the date of the incident, the victim was around 13 years of age and, as such, a child as defined under Section 2(1)(d) of the POCSO Act.

11] In the backdrop of the above finding, the evidence adduced by the prosecution with regard to the incident of penetrative sexual assault on the victim needs minute scrutiny and appreciation. Learned advocate for the appellant took me through

the oral and documentary evidence. Learned advocate submitted that the evidence adduced by the prosecution is not sufficient to prove the incident of penetrative sexual assault on the victim on 2nd January, 2020. Learned advocate took me through the evidence of the victim and submitted that the victim, at the stage of her evidence before the Court, has improved her version on all the material aspects. Learned advocate submitted that the evidence of the victim, as to the occurrence of the incident on the given date, is not credible and trustworthy. The evidence of the victim, in the submission of the learned advocate for the appellant, is not of sterling quality to place implicit reliance on the same, to convict the appellant. Learned advocate submitted that the evidence of the parents of the victim is not direct evidence as to the occurrence of the incident. It is pointed out that there are major material omissions in their evidence before the Court. The improvements made by the victim as well as by her parents are major to create a doubt about their credibility. Learned advocate submitted that the medical evidence with regard to the examination of the victim is not sufficient to accept the case of the victim that on 2nd January, 2020, she was subjected to penetrative sexual assault. Learned advocate submitted that the Medical Officer did not notice any fresh injury to the genitals of the victim. Learned advocate pointed

out that the Medical Officer had noticed an old healed hymen tear. It is submitted that, on the basis of this old healed hymen tear, the complicity of the appellant with regard to the incident occurred on 2nd January, 2020, cannot be established.

12] Learned advocate took me through the medical examination report of the appellant. Learned advocate pointed out that, on examination of the penis of the appellant, the doctor found that the smegma was present. Learned advocate submitted that, in the teeth of the evidence of the Medical Officer, the occurrence of the incident on 2nd January, 2020 is highly improbable. As far as the DNA report is concerned, the learned advocate submitted that the prosecution has failed to establish beyond reasonable doubt that there was no scope for contamination of the samples. Learned advocate took me through the evidence on record from the time of the collection of the samples till the analysis of the samples and submitted that, without proper evidence with regard to the care and precautions taken to maintain the purity of the samples and to avoid the contamination of the samples, reliance cannot be placed on such evidence. Learned advocate further submitted that the seizure of the cloths of

the victim by the Investigating Officer is doubtful. Learned advocate submitted that the learned Judge has failed to properly appreciate the evidence and, as such, has come to a wrong conclusion.

13] Learned APP submitted that the omissions proved from the evidence of the victim and her parents are not major omissions to doubt their credibility. In the submission of the learned APP, the evidence of the victim is sufficient to prove the penetrative sexual assault on her by the appellant on 2nd January, 2020. Learned APP submitted that the appellant, at the time of his examination, admitted the act of penetrative sexual assault by him with the victim. Learned APP submitted that the prosecution, by adducing cogent and concrete evidence, has proved that there was no scope for tampering with the samples. Learned APP submitted that the CA reports and the DNA report clearly record that the samples have been received in sealed condition. Learned APP submitted that the DNA report is the best evidence in this case to corroborate the version of the victim as well as the version of her parents.

14] In order to appreciate the rival submissions advanced by the learned advocates for the parties, I have minutely scrutinized

the evidence on record. In this case, the Court has to carefully scrutinize the evidence of the victim. The parents of the victim, as can be seen from the record, are not the direct witnesses to the occurrence of the incident. It is the case of the prosecution that, on 2nd January, 2020, there was rain, and therefore, the informant had not gone to the field for work. In the evening, the father of the victim, while coming back from the field, noticed that near the Government Hospital of the village, the appellant had caught hold the hand of the victim and was dragging her towards the hospital. When the appellant saw the father of the victim, he released the victim and ran away. It is the case of the prosecution that the victim went to the house. The father then narrated this incident to her mother. It is further case of the prosecution that, by this time, the victim had slept. The informant, when the victim woke up, made the enquiry with her about this incident and, at that time, the victim narrated the incident occurred at the hillock in the noon with her. It is, therefore, apparent that the parents of the victim, even as per the case of prosecution, are not in any manner directly or indirectly are privy to the incident, which had occurred at the hillock. At this stage, it is necessary to mention that, if the evidence of the victim, on scrutiny, is found to be credible and trustworthy, then, to some extent, for the purpose of lending an assurance to the

case of prosecution, the evidence of the parents of the victim can be considered.

15] The victim, in this case, is the most important witness. The victim, on the date of the report, had accompanied her mother to the police station. The report of the incident was lodged on 3rd January, 2020 at 10:08 p.m. The incident had occurred in the noon of 2nd January, 2020. Even if it is assumed that the parents of the victim came to know about this incident in the evening of 2nd January, 2020, there was more than 24 hours delay in lodging the report. The report lodged by the mother of the victim at Exh.24 is silent about the penetrative sexual assault. It was stated in the report that the appellant had removed her cloths, lied her on ground and had done some work with her. The informant is a rustic villager. She had narrated the incident in her own language. In her evidence, she has not stated about the occurrence of any incident prior to 2nd January, 2020. Same is the evidence of her father. The victim, in her evidence, has not stated the date of the incident. However, she has stated that, on that day, the date was 2nd. She has stated that, on that day, there was rain, and therefore, she did not go to the school. She has stated that, when she was going to bring Kharra (tobacco and betelnut mixture), the accused

met her while returning from the shop. Thereafter, she went to bring the book from her friend. The appellant met her and took her to the hillock. While narrating the actual incident, she has stated that there the accused removed her cloths and his cloths and then he had relations with her. In her evidence, she has stated that the accused penetrated his penis into her vagina and thereafter brought her down from hillock and then she came to the house. In her evidence, she has stated that, when she narrated the incident to her parents, on the very same day, her parents had gone to the police station for lodging the report. In the further part of her examination-in-chief, she has stated that on the next day, they went to lodge the report to the police station.

16] Perusal of her cross-examination would show that her evidence with regard to the insertion of penis into her vagina has been found to be omission. It is further seen that major part of her examination-in-chief has been proved to be omission. It is to be noted that this occurrence of the incident as narrated by the victim appears to be doubtful. The victim, in her evidence, has stated that, by walk, if one has to go to hillock, it requires one hour. It is her case that the appellant had forcibly took her to hillock. The cross-examination of the victim would show that, on the road to the

hillock, there are houses. Even on the hillock, the people regularly come and go. It has come on record that this sexual act with the victim was committed in the open area. It needs to be stated at this stage that on the given date, there was rain. It is to be noted that if the accused had committed forcible intercourse with the victim in the open area on the hillock, then the mud ought to have stuck to her cloths as well as the cloths of the appellant. There was no injury on the body of the victim. Perusal of the panchanama would show that the surface at the spot of the incident was rough. There were pebbles/stones on the spot.

17] It is further seen on perusal of the record that the statement of the victim was recorded by PW-7. In her statement before the Police, she narrated only one incident, which had occurred on 2nd January, 2020. It is further seen that, in her statement before the police, she did not narrate the incident of penetrative sexual assault, i.e., the insertion of penis into her vagina by the appellant. It has come on record that the statement of the victim was recorded by the Magistrate. That statement has not been exhibited. The statement is part of the record. The said statement can be perused by the Court for the purpose of ascertaining the truthfulness of the evidence of the victim recorded

before the Court. Perusal of this statement would show that, in her statement before the Magistrate, she narrated two incidents. According to her, first incident occurred on 28th December, 2019. As per her statement, the accused had committed sexual intercourse with her in his house. As far as the incident of 2nd January, 2020 is concerned, she has stated that the appellant committed sex with her. The incident, which she had narrated before the Court, was not specifically stated by her while recording her statement. In my view, overall perusal of her evidence creates doubt about the occurrence of the incident on 2nd January, 2020.

18] In this context, it is necessary to consider the evidence of the mother of the victim. Perusal of the evidence of the mother of the victim also creates doubt about the occurrence of the incident and the nature of the incident occurred on 2nd January, 2020. The informant has narrated that the victim told her about the sexual assault committed on her by the appellant. She has admitted that, prior to this incident, there was a discussion in the locality about the love affair of the victim. She has admitted that, when there was a discussion about the love affair of the victim with the appellant, they lodged the report against the appellant. She has admitted that, before lodging the report, she had a discussion with the respectable

persons from her community and then lodged the report. She has categorically admitted that, on 2nd January, 2020, she had gone to the police station. On 2nd January, 2020, she went to the police station and the police made enquiry with her about the incident. She has admitted that on 2nd January, 2020, she lodged the report and made allegations against the appellant. The police had obtained her signature on the said report. She has categorically admitted that, after lodging the report against the appellant on 2nd January, 2020, on the next day, the police told her that on the basis of the said report, they cannot take action against the appellant. She has further stated that, therefore, on the second day, she lodged the report. It is to be noted that this first report lodged on 2nd January, 2020 is not part of the record. However, the admission of informant makes it clear that the incident narrated in the said report was not sufficient to register the crime of penetrative sexual assault on the victim by the appellant. In my view, this is a very vital and important circumstance. This admission, therefore, creates doubt about the occurrence of the incident of penetrative sexual assault on the victim on 2nd January, 2020. If such an incident had occurred, then the informant would have narrated the same in great detail in her report to the police on 2nd January, 2020. In my view, this is a very vital circumstance.

19] In this context, it is necessary to see the evidence of the father of the victim. The father has also admitted that on 2nd January, 2020, they had gone to lodge the report against the appellant to the police station. He has also admitted that, on the very same day, the report was lodged by her wife. He has further stated that on 2nd January, 2020, the police recorded his statement as well as the statement of the victim. In my view, this is a very important circumstance in this case to create doubt about the occurrence of the incident on 2nd January, 2020.

20] If the evidence of the victim and her parents is considered in totality, it would show that it creates doubt about the occurrence of the incident on 2nd January, 2020. The DNA report, which has been relied upon by the prosecution, needs to be appreciated in this background. It is pertinent to note that the medical evidence is not sufficient to corroborate the version of the victim. At this stage, it would be necessary to consider the evidence of the Medical Officer PW-10.

21] The history of assault narrated by the victim before the doctor was recorded by the doctor. The victim had stated before

the doctor (PW-10) that the first sexual assault had occurred on 28th December, 2019. It was with her consent. She has stated that the second sexual assault occurred on 2nd January, 2020 at about 2:00 p.m. The victim had admittedly changed her cloths. The victim is silent about the colour and other description of the knickers worn by her on the date of the incident dated 2nd January, 2020. The Medical Officer, on examination of the genitals of the victim, found that there was no evidence of matting, staining, swelling, infection, edema, tear, bruises, swelling, bleeding, or tenderness. The doctor found the old healed torn present on the hymen. The edges of the hymen were regular, and no injury was present. The doctor, on the basis of the hymen tear, opined the possibility of sexual assault. The doctor has categorically admitted, in her cross-examination, that she did not find any recent injury on the entire body or the genital area of the victim. The doctor has admitted that she did not mention the age of the old healed torn present on the hymen. The doctor has categorically admitted that the hymen can get torn during cycling or any heavy physical activity. The doctor has admitted that, if there is a sexual intercourse on a minor girl, the injury may be possible to her genitals. So, the evidence of the Medical Officer does not in any manner suggest that, in the recent past, the victim was subjected to

penetrative sexual assault. The doctor did not notice any fresh injury. The history of assault narrated by the victim to the doctor clearly suggests that she had a love affair with the appellant, and in the month of December, 2019, she had consensual sex with the appellant. It is to be noted that, in this case, which has been based on the report of the informant with regard to the incident of 2nd January, 2020, it would not be possible to take cognizance of any such incident occurred in the past. The evidence of the Medical Officer, therefore, does not lend an assurance to the testimony of the victim as to the occurrence of the incident on 2nd January, 2020.

22] The next important witness is the Medical Officer (PW-5), who had examined the appellant. He has opined that the appellant was capable of performing sex. The doctor, on examination of the penis of the appellant, noticed that smegma was present. The doctor has categorically recorded that cremastic reflexes were present. In my view, this evidence of the doctor assumes great importance. The Medical Officer, in his cross-examination, has stated that, if a person does not commit sexual intercourse for 3-4 days, the smegma should be found on the penis. He has stated that, at the time of the sexual intercourse, the

foreskin of the penis retracts, and because of friction, smegma gets brushed away sometimes. In my view, the presence of the smegma is the circumstance in favour of the defence of the appellant. In my view, therefore, the evidence of both the Medical Officers does not corroborate the evidence of the victim on the material aspect, namely the occurrence of the incident on 2nd January, 2020.

23] The next important piece of evidence relied upon by the prosecution is the DNA report. It is true that the semen detected on the knickers of the victim was found to be of the appellant. In my view, the evidence of the DNA is scientific evidence. The DNA analysis report by itself cannot be a conclusive proof. The authenticity of the said evidence has to be independently established by the prosecution. The prosecution is required to produce cogent and concrete evidence from the stage of collection of the samples till the time of the analysis of the samples. In this case, as per the prosecution, the incident occurred on 2nd January, 2020, at about 2:00 p.m. The report was lodged on 3rd January, 2020 at about 10:08 p.m. The victim had changed her cloths by that time. The record shows that PW-7 had seized the cloths of the victim on 3rd January, 2020, at about 8:20 p.m. The victim was examined by the Medical Officer at 12:15 a.m. of 4th January,

2020. PW-7 is not the Investigating Officer. The seized cloths, as per the case of the prosecution, had been carried to CA on 8th January, 2020. It is further seen that the blood samples, which had been collected for the purpose of DNA analysis, had not been collected in a DNA kit. The biological samples collected by the Medical Officer had been deposited in the Malkhana of the police station and all the samples had been carried to F.S.L. on 8th January, 2020. The Malkhana In-charge has not been examined. The preservation of the blood samples in the police station or the precautions taken to preserve the blood samples in the police station have not been stated by the Investigating Officer (PW-14). The record, namely Malkhana register entry, does not show that all the samples had been sealed. Therefore, the evidence on record is not sufficient to record a concrete finding that there was no possibility of either contamination or manipulation of the samples. It is further seen that the victim has stated that on 28th December, 2019, the appellant had committed intercourse with her. The victim, in her evidence, has not uttered a word about the description, colour, etc. of the knickers worn by her on the date of the incident. The prosecution has not adduced any evidence that the same knickers was worn by her on the date of the incident. The police, on the date of the incident, had not seized the knickers. The

possibility of the victim wearing the said knickers on 28th December, 2019 has not been ruled out. There is no evidence on record to clarify this aspect. There is no evidence about the custody of the knickers for two days.

24] In the backdrop of the above evidence, the authenticity and credibility of the DNA report has to be considered. Before placing implicit reliance on the DNA report, the prosecution is duty-bound to prove that there was no scope for tampering and contamination. The purity and quality control of the samples till the analysis must be maintained and proved. In this case, the prosecution has not examined the CA, who had analyzed the samples initially, and the DNA Analyst, who had analyzed the samples in the DNA division. The reasons have not been placed on record. The reports have been admitted in evidence without examining the DNA Analyst. The prosecution has taken the risk. In my view, this is a very vital circumstance against the prosecution. It is seen on perusal of the DNA report at Exh.58 that the samples had been received in the DNA division of R.F.S.L., Nagpur, on 25th February, 2020. The report would further show that analysis was completed on 27th October, 2020. The DNA Analyst, in his substantive evidence, must depose about the condition of the

samples when the samples were received and the preservation of the samples during the period from 25th February, 2020 to 27th October, 2020. The DNA Analyst needs to be examined to establish the precautions taken during the course of the analysis to maintain the purity of samples and avoid risk of contamination. In my view, this vital evidence is not on record. Therefore, in my view, it would not be possible to place implicit reliance on the DNA report to sustain the conviction of the appellant. In this context, it would be appropriate to make a useful reference to the decision of the Hon'ble Apex Court in the case of ***Rahul Vs. State of Delhi, Ministry of Home Affairs and Another with connected appeals [(2023) 1 SCC 83]***. It reads thus:

“The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.

If DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed and sent

for DNA profiling.

The DNA may be more useful for purpose of investigation but not for raising any presumption of identity in a court of law.”

25] In view of the above, I conclude that the evidence on record is not sufficient to prove the charge against the appellant. The learned Judge has failed to properly appreciate the evidence and has come to a wrong conclusion. The prosecution has failed to establish the foundational facts to trigger the presumption as postulated under Section 29 of the POCSO Act against the appellant. The presumption is a rebuttable presumption. In the absence of establishing the foundational facts, the accused cannot be called upon to lead the evidence and rebut the presumption. In this case, the presumption was not at all triggered against the appellant. In view of this, I conclude that the conviction and sentence cannot be sustained. In view of this, I proceed to pass the following order:

ORDER

- i] The Criminal Appeal is **allowed**.
- ii] The judgment and order of conviction and sentence passed against the appellant by the learned Additional Sessions

Judge, Hinganghat, dated 31.01.2022, in Special (POCSO) Case No.6/2020, is quashed and set aside.

iii] The appellant/accused – **Roshan S/o. Manohar Sahare** is acquitted of the offences punishable under Sections 376(2)(j), 376(2)(n) and 376(3) of the IPC and under Section 5(l) r/w. Section 6 of the POCSO Act.

iv] The appellant/accused - **Roshan S/o. Manohar Sahare** is in jail. He be released forthwith, if not required in any other case/crime.

v] The Criminal Appeal stands disposed of in the above terms.

(G. A. SANAP, J.)

Vijay