



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

CRIMINAL APPEAL NO. 645 OF 2022

APPELLANT : Dayanand Malikarjun Khandare,
Aged about 42 Years, Occ. :
Cultivator, R/o. Shengaon, Taluka
Jivati, Distt. Chandrapur.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through P.S.O.
Jivti, Distt. Chandrapur.

Amended as per Court's
Order Dt. 30.09.2022. 2. XYZ (Victim), thr.
Complainant/Informant in Crime
No.17/2019, registered with Police
Station Jiwati, District Chandrapur.

Mr. A.P. Raghute, Advocate for the Appellant.
Mr. Ganesh Umale, APP for Respondent No.1/State.
Ms. Mohini A. Sharma, Advocate appointed to represent
Respondent No.2.

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

JUDGMENT

. The appellant, who is the father of the victim-girl, has
filed this appeal against the judgment and order of his conviction
and sentence dated 17.08.2022, passed by the learned Special

Judge, Special Court (POCSO), Chandrapur. The learned Special Judge convicted the appellant of the offences punishable under Section 4(2) of the Protection of Children from Sexual Offences Act, 2012 r/w Sections 376(2)(f) and 376(3) of the Indian Penal Code, 1860 (for short, "IPC") and under Section 506 of the IPC and sentenced him to suffer rigorous imprisonment for 20 years and to pay a fine of Rs.6,000/- and in default to suffer rigorous imprisonment for one year for the offences punishable under Section 4(2) of the POCSO Act r/w Sections 376(2)(f) and 376(3) of the IPC and rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default to suffer rigorous imprisonment for one month for the offence punishable under Section 506 of the IPC.

02] The case of the prosecution is as follows:

The informant (PW-1) is the mother of the victim. The crime was registered on her report. The case of prosecution, which can be unfolded from the report and other materials, is that the appellant and the informant have three daughters and one son. They were residing together. There was matrimonial discord between the appellant and the informant. The informant was tortured and ill-treated by the appellant under the influence of

liquor. Therefore, the informant was constrained to go to Mumbai with her brother, leaving her children with the husband. It is stated that the incident of rape on the victim occurred 15 days thereafter in the night of 6th September, 2019. The appellant committed forcible sexual intercourse with the victim. The daughter, by name Tejashree, was with her grandmother. The third daughter, Tanushree, and the son, Shiva, were with the victim in the house. They were sleeping in one room. In the night, the appellant woke up the victim and insisted for intercourse with her. The appellant forcibly dragged her in another room of the house and thereafter, removing her cloths, committed forcible sexual intercourse with her. The appellant threatened to kill her in case she raised hue and cry. After this incident, the victim woke up her sister and narrated the incident to her. The victim had fear that her father would do similar act with her sister. Therefore, the victim and her sister went to the house of their acquaintance by name, Mr. and Mrs. Hakkani Sheikh. The victim narrated the incident to Mrs. Hakkani. Mrs. Hakkani made a phone call to the maternal uncle of the victim and narrated this incident to him. Mrs. Hakkani also narrated the said incident on the phone in detail to the maternal aunt of the victim. The informant was apprised about this incident by her brother and her sister-in-law. They told the victim that, on the next

day, they would come to their village and then the matter would be reported to the police.

03] On the next day, i.e., 7th September, 2019, the informant along with her brother came to Shengaon. They went to the house of Hakkani. The victim and her sister were at the house of Hakkani. The informant made an enquiry with the victim. The victim narrated the entire incident of rape on her by the appellant. Thereafter, they met their relatives. On 9th September, 2019, the informant along with her brother and victim went to Jivti Police Station and lodged the oral report. Her report was reduced into writing, and on the basis of the report, a crime bearing No.72/2019 was registered against the appellant.

04] PW-10 - Rekha Kale, P.S.I. attached to Jivti Police Station, carried out the investigation. The Investigating Officer referred the victim for the medical examination to General Hospital, Chandrapur. The appellant was arrested. The cloths of the victim and the cloths of the appellant were seized. The Investigating Officer recorded the statements of the witnesses. The samples had been sent to R.F.S.L., Nagpur, for the analysis. The statement of the victim was recorded by the learned Judicial

Magistrate, First Class, Rajura. After completion of the investigation, the charge-sheet was filed against the appellant.

05] The learned Special Judge framed the charge against the appellant. The appellant pleaded not guilty to the charge. The defence of the appellant is of false implication in this crime at the instance of the informant and her brother with an intention to keep him away from the house and the landed property. It is further his defence that the victim had a love affair with a boy. The appellant had warned the victim of serious consequences for keeping the relations with the boy. The victim and the informant, therefore, falsely implicated him. The prosecution, in order to bring home the guilt of the appellant, examined 10 witnesses. The learned Judge, on consideration of the evidence, held the appellant guilty of the charge and sentenced him as above. The appellant has come before this Court by way of this appeal.

06] I have heard Mr. A.P. Raghute, learned advocate for the appellant, Mr. Ganesh Umale, learned APP for respondent No.1/State and Ms. Mohini A. Sharma, learned advocate appointed to represent respondent No.2/victim. Perused the record and proceedings.

07] Learned advocate for the appellant submitted that the evidence of the victim does not inspire confidence. The oral evidence of the victim as to the occurrence of the incident has not been corroborated by the medical evidence. The victim was examined by the Medical Officer after 78 hours from the time of the occurrence of the incident. It is pointed out that the Medical Officer noted down that the injury to the hymen of the victim was fresh. Learned advocate submitted that the menstrual cycle of the victim had started on 6th September, 2019. There was a serious dispute between the appellant and his wife. Learned advocate took me through the evidence of the informant, victim, and the brother of the informant and pointed out that, on account of the quarrelsome nature of the appellant, the informant, children, and other relatives were fed up with the appellant. Learned advocate pointed out that the parents of the appellant, after the arrest of the appellant, were not allowed to stay in the house by the informant. Learned advocate pointed out that the informant took possession of the house as well as of the land. Learned advocate submitted that the evidence of the victim, informant, and her maternal uncle adduced by the prosecution is not sufficient to prove the charge against the appellant. Learned advocate submitted that the prosecution has not examined Mr. and Mrs. Hakkani, who in the

fact situation, would have been the best witnesses to depose about the incident. Similarly, the younger daughter of the informant, who admittedly was sleeping with the victim in the house and accompanied the victim to the house of Hakkani, has not been examined. There are major inconsistencies and discrepancies in the evidence of the witnesses. Learned advocate submitted that the appellant, being the father of the victim, would not commit such a gruesome act with his own daughter. If he had committed such a gruesome act in his house where the younger daughter and son were sleeping, they would have noticed the same. The CA report does not corroborate the evidence of the victim. Learned advocate submitted that the learned Judge has failed to properly appreciate the evidence and has come to a wrong conclusion.

08] Learned APP submitted that the defence of the appellant is neither probable nor acceptable. The evidence of the victim is cogent, concrete, and reliable. It is submitted that the conduct of the victim is consistent throughout. The victim went to the house of their acquaintance, Mr. and Mrs. Hakkani, with her sister. She informed Mr. and Mrs. Hakkani about the forcible sexual intercourse with her by the appellant. Learned APP submitted that Mrs. Hakkani made a phone call to the maternal uncle of the

victim, who was in Mumbai, and informed them about the deplorable act committed by the appellant with the victim. Learned APP submitted that the mother, even for the sake of taking revenge against her husband or to keep him away from the family, would not involve her daughter, who at that time was about 16 years of age, in such a crime, which invites stigmatic consequences. Learned APP submitted that the oral evidence of the victim has been corroborated by the medical evidence. The Medical Officer found fresh injury to the hymen in the 6 O'clock position. Learned APP submitted that the injury to the hymen is the sufficient evidence to corroborate the version of the victim. Learned APP, in short, supported the judgment and order passed by the learned Judge.

09] Learned advocate Ms. Mohini A. Sharma, appointed to represent respondent No.2/victim, has adopted the submissions made by the learned APP.

10] I have minutely perused the oral and documentary evidence adduced by the prosecution. I have perused the judgment and order passed by the learned Judge. At the outset, it is necessary to note that the appellant is the father of the victim. The appellant has not seriously denied the birth date of the victim. According to

the victim, her birth date is 3rd September, 2004. The prosecution has examined an independent witness to prove the birth certificate of the victim. PW-7, who at the relevant time, was the Sub-Registrar (Birth and Death), M/East Ward of Greater Mumbai. He has stated that the victim was born in a private clinic known as Shri Clinic, Dhantala Private Hospital. The information of the birth of the victim was forwarded by the hospital to the Municipal Corporation, Mumbai. The date of registration of the birth is 24th December, 2004. The informant has also stated that the victim was born on 3rd September, 2004. The appellant, who is the father of the victim, has not denied this fact. The evidence adduced by the prosecution is sufficient to prove that the victim, on the date of the incident, was about 16 years old. The victim, on the date of the incident, was a child, as understood by Section 2(1)(d) of the POCSO Act.

11] Before proceeding to appreciate the evidence adduced by the prosecution, it would be necessary to make a mention of some of the undisputed facts. 15 days prior to the occurrence of the incident, there was a quarrel between the appellant and the informant. The appellant had beaten the informant and driven her out of his house. He did not allow the informant to take custody of

the children. The informant went to the house of her uncle at Mukhed. The informant from Mukhed went to the house of her brother at Mumbai, leaving the children with the appellant. The informant has stated that the appellant was addicted to liquor, and under the influence of liquor, he used to beat her. It is, therefore, apparent that there was a serious matrimonial dispute and discord between the appellant and the informant. The informant was driven out of the house. She had taken shelter with her brother in Mumbai.

12] It is further pertinent to mention that the victim is the eldest daughter. The children continued to stay with the appellant. The children did not insist to join the company of the mother in Mumbai. It is also not the case of the prosecution that the appellant was misbehaving or beating his children. The son, on the date of the incident, was 6 years old. The parents of the appellant were constrained to stay elsewhere. One daughter was staying with them. The prosecution has not examined another daughter of the appellant, who was admittedly sleeping in the house in the night of the occurrence of the incident. Her statement was recorded under Section 164 of the Cr.PC before the Magistrate. The Investigating officer did not record the statements of Mr. and Mrs. Hakkani. In

the fact situation, Mr. and Mrs. Hakkani were the most important witnesses for the prosecution. The prosecution has not examined Mr. and Mrs. Hakkani. No plausible explanation has been placed on record. It has come on record that, after the arrest of the appellant, the informant and her brother harvested the crop from the field. The informant, with the children, has been residing in the house and cultivating the land. It is further admitted position that the informant did not allow the parents of the appellant to stay with them in the house as well as to cultivate the field. In my opinion, the above-stated admitted facts cannot be glossed over while appreciating the evidence of the victim, informant, and other witnesses.

13] The defence of the appellant is also required to be borne in mind while appreciating the evidence. The probability and acceptability of the defence of the appellant by and large depends upon the finding of this Court as to the credibility and truthfulness of the evidence adduced by the prosecution. PW-1 is the informant and mother of the victim. She came to know about the incident from the victim. She has stated that on 7th September, 2019, at about 3:00 a.m. to 3:30 a.m., her brother received a phone call of Mrs. Hakkani, and Mrs. Hakkani informed her brother about the

rape committed on the victim. She has stated that at that time the victim narrated the incident to the wife of her brother. She has stated that, when the phone was received, she was at the house of her uncle in Mumbai. Her brother called her to his house and informed her about the incident. She has stated that thereafter, on the next day, they left for Shengaon and reached Shengaon on 8th September, 2019. She has stated that they went to the house of Hakkani. The victim and her sister were present at the house of Hakkani, and on her enquiry, the victim narrated the entire incident to her. She has stated that, on the next day, at about 9:00 a.m., she along with the victim went to Jivti Police Station and lodged the report. The defence of the appellant has been put to her in her cross-examination.

14] The informant is not the direct witness to the occurrence of the incident. She was subjected to searching cross-examination. She has stated in her cross-examination that 15 days prior to the incident, her maternal uncle, her uncle, and her brother visited her house. She has stated that, at that time, the quarrel took place between the appellant, her maternal uncle, and her brother on account of the cantankerous behaviour of the appellant with her. She has stated that in this quarrelsome atmosphere, she left the

house and went to stay with her brother. As far as the victim is concerned, the informant has stated in her cross-examination that the appellant had made an enquiry on the phone about the victim. The informant, on enquiry made by the appellant about the victim, told him that the victim had not come to her. She has stated that the appellant told her that along with Vishnu Rajmani, he took search of the victim in the village. She has stated that when the victim left the house, her son Shiva was with the appellant.

15] Further part of her cross-examination is very relevant. This part of cross-examination, if appreciated properly, would throw light on the defence of the appellant. She has stated that, after the arrest of the appellant, she along with her children started residing at the house of the appellant. She has stated that the parents of the appellant were residing separately from them. She has stated that after 4-5 days, the father of the appellant came to her and informed her about the arrest of the appellant. She has admitted that she quarrelled with the father of the appellant and told him to live separately from them. In her further cross-examination, she has admitted that she wanted to lodge a report against her father-in-law. However, her report was not taken by the police. She had reported to the police that her father-in-law had

instigated the appellant to commit the sexual intercourse with the victim. She has admitted that she along with her brother harvested and sold the crop from the field. It was suggested to her that prior to this incident, the victim had left the house without informing them. She has denied this suggestion. However, in the very next breath, she has stated that she lodged the report at the police station. She has admitted that the grievance was made in the said report that the victim-girl left the house without informing them. The report was lodged at Jivti Police Station. The victim was found in the same evening. It is not the case of the prosecution that the daughters and the son were also subjected to torture and ill-treatment at the hands of the appellant. It seems that the children did not insist to accompany the informant, when she left the house and went to stay in Mumbai. The children were happy with the father. The admission given by the informant clearly suggests that the victim had gone missing, and therefore the matter was reported to the police. In the cross-examination of the informant, the appellant put his defence to the informant, which she has denied.

16] It is necessary to carefully peruse the evidence of the victim. The victim has stated that on 6th September, 2019, at about 11:30 p.m., they were sleeping in the room of the grandmother.

The appellant was sleeping in the room of the grandfather. She has stated that the appellant came to her and woke her up and took her to another room. She has stated that the appellant told her that her mother was not at house and therefore he wanted to commit intercourse with her. She has stated that the accused removed her cloths and committed sexual intercourse with her. She has stated that she cried, but it was of no use. She has stated that on 6th September, 2019, her menstrual cycle had started. She has stated that, after committing sexual intercourse, the appellant went out of the house. She has stated that immediately she went to her sister and woke her up because she thought that her father would commit similar act with her sister. She has stated that she took her sister and went to the house of Mr. and Mrs. Hakkani Sheikh. In further part of her evidence, she has stated that Mrs. Hakkani made a phone call to her maternal uncle. She spoke to her maternal aunt and narrated the entire incident. She has stated that 2-3 days thereafter her mother came with her maternal uncle to Shengaoon and on 9th September, 2019, they went to the police station and lodged the report. In her cross-examination, she has denied the suggestion that there used to be quarrels on a trifle reason between the parents. She has stated in her cross-examination that on 6th September, 2019, it was the first day of Mahalaxmi Festival. The

people in the village had installed the Mahalaxmi Idol in their respective houses. It was suggested to her that Laxman Khonde, Ramesh Khandare, and Balaji Birajdar are their neighbours. She has admitted that in the night the father carried out the search of the children in the village. He had come to the house of Hakkani. She has stated that she and her sister hide themselves in the house of Hakkani. It was suggested to her that she had a love affair with the son of Mr. and Mrs. Hakkani and her father was against the same and therefore to get rid of her father, the report was lodged against him. She has denied this suggestion. The victim, in her cross-examination, has denied all the suggestions put to her consistent with the defence of the appellant.

17] While appreciating the evidence of the victim, it is necessary to bear in mind that, instead of going to her grandparents, who were residing in the same village, she went to the house of Mr. and Mrs. Hakkani. It is not the case of the prosecution that the grandparents were also not having cordial relations with the children. The victim, with her sister, was expected to go to the grandparents and narrate them about the incident. The victim chose the Hakkani couple for the help. Even if it is assumed for the sake of argument that the victim had more

faith in the Hakkani couple than her grandparents, the fact remains that the prosecution has not examined Mr. and Mrs. Hakkani as a witness. Similarly, the Investigating Officer also did not record the statements of Mr. and Mrs. Hakkani. The most important link in this case would be the Hakkani couple. Failure to examine either of them is a circumstance against the case of the prosecution. It has come on record that the daughters for 2-3 days after this incident stayed with Hakkani. It shows that the relations between Hakkani and the informant and the daughters were thick and cordial. The Hakkani couple would have no hesitation to come before the Court and narrate the incident. The Investigating Officer conveniently kept the Hakkani couple away during the investigation. It has come on record that the victim had her menstrual cycle during these days. The victim has stated that she wore the cloths of Mrs. Hakkani during this period. The police did not seize those cloths.

18] It is, therefore, evident on perusal of the evidence of the informant and the victim that there was a serious matrimonial dispute between the appellant and the informant. The appellant had driven the informant out of the house. The informant, therefore, went to stay with her brother in Mumbai. The informant

and the appellant have four children. The brother of the informant was supporting her. In short, it seems that the informant, her brother, and her relatives were fed up with the cantankerous behaviour of the appellant. It was suggested to the victim that the love letters written by her to her boy friend were caught by the appellant, and the appellant had strictly warned her to discontinue her relations with the said boy. It was suggested that the said boy was the son of the Hakkani couple. In my view, this could be the reason to keep the Hakkani couple away from the Court. The informant has admitted that earlier the victim had gone missing. The report of the same was lodged with the police station, but in the evening, the victim came back. This shows that there was something wrong with the victim. This fact, in my view, is consistent with the defence of the appellant.

19] As far as the evidence of the informant and the victim is concerned, there are major inconsistencies on material aspects. The informant, in her evidence, has stated that in the night of 7th September, 2019, she made a phone call to Hakkani Sheikh and talked to the victim on the phone. She has stated that at that time the victim was crying. This statement is contrary to what she has stated in her report. In her report, she has stated that when a phone

call was received from Mrs. Hakkani to her brother, the victim did not talk to her. She has stated that she talked to Mrs. Hakkani. The victim, in her evidence, has stated that the incident occurred on 6th September, 2019, at about 11:30 p.m. She has further stated that immediately she went to her sister and woke her up. She has stated that she had fear that her father would commit similar act with her sister, and therefore she took her sister and went to the house of Hakkani Sheikh. Her statement recorded before the Magistrate is on record. It is at Exh.23. In her statement before the Magistrate, she has stated that, after the incident, she went back to her room and slept. She has further stated that she did not know whether her father went out in the night or not. She has stated that at about 3:00 a.m., she was scared and got up. She has stated that thereafter she woke up her sister Tanushree and left the house. She has stated that she narrated the incident to her sister. This statement is contrary to her evidence before the Court. She has stated that immediately after the incident, she left the house. In my view, this is another circumstance to create doubt about the occurrence of the incident.

20] PW-8 is the maternal uncle of the victim. He has reiterated the incident narrated by the informant before the Court.

He has stated that Mrs. Hakkani had made a phone call to him at about 2:00 a.m. on 7th September, 2019 and informed him about the occurrence of the incident. He has stated that on 8th September, 2019, they went to Shengaon and met Mrs. Hakkani. The victim and her sister were at the house of Hakkani. He has admitted in his cross-examination that the parents of the appellant were residing with them before the arrest of the appellant. It was suggested to him that for 2-3 days, the victim had eloped with the son of Hakkani. She was not traceable. It was suggested to him that, therefore, the report was lodged by the informant with Jivti Police Station. As far as his evidence is concerned, it is not direct evidence. The younger daughter Tanushree has not been examined. Her statement was recorded before the Magistrate.

21] In the above backdrop, it is necessary to consider the report of the Medical Officer. PW-4 is the Medical Officer. At the relevant time, he was attached to Government Medical College, Chandrapur, as Assistant Professor. He has stated that he examined the victim on 10th September, 2019. The history of the assault was narrated by the victim. He has stated that, on examination, he found that her hymen was torn. The injury was fresh. The hymen torn was in the 6 O'clock position. The edges were irregular. The

Medical Officer has admitted that before referring the victim to the Government Medical College, Chandrapur, she was referred to Rural Hospital, Jivti. The Medical Officer, Jivti, had referred the victim to the Government Medical College, Chandrapur. He has stated, in his cross-examination, that on the date of the examination of the victim, the victim had menstrual cycle. He has recorded in column No.VI of Exh.22 that the genitals of the victim were normal. He has stated that he reserved his opinion subject to the receipt of the CA report. He has stated that the hymen torn is not recorded in the relevant column of the report.

22] It is to be noted that the incident allegedly occurred on 6th September, 2019, at about 11:30 p.m. The victim was examined by the Medical Officer on 10th September, 2019 at 5:00 p.m. The rough calculation would show that the victim was examined after 78 hours of the occurrence of the incident. The doctor, in his report at Exh.22, has recorded that the victim was examined after about 3 days of the occurrence of the incident. In the very next column, the doctor has recorded that the presence of the injury to the genitals/anus was nil. In column No.VI(f), the doctor has recorded that the fresh injury was present to the hymen. The position of the tear was 6 O'clock. The doctor has stated that it was

not a bleeding injury. Admittedly, the victim had her menstrual cycle at the relevant time. The doctor did not notice any bleeding. Since the examination of the victim was carried out after three days of the incident, the doctor was required to record the age of the injury. The injury to the hymen after three days of the rape would not remain fresh. It has come on record that the victim, with her sister, was staying at the house of Hakkani. The fresh injury to the hymen indicates that the victim was subjected to sexual intercourse in the recent past of her examination. In my view, therefore, this fresh injury noticed after three days of the incident is a doubtful circumstance. In my view, it is consistent with the defence of the appellant. The possibility of the victim indulging in the intercourse with any other person cannot be ruled out. The fresh injury, if any, noticed in such a case would have been the strong circumstance to draw an inference of the sexual intercourse by the victim in the recent past. The Medical Officer did not record the colour of the injury in his report. The doctor in his report was required to elaborate as to how the injury was fresh, when she was subjected to sexual intercourse three days prior to the examination.

23] It is true that the mother would not involve her daughter in such an incident. The incident of sexual assault, if reported to

the police, invites stigmatic consequences for the girl as well as for the family. In this case, the father was the perpetrator of the crime. The reporting of such a matter against the father would have defamed the informant and the victim. However, the Court cannot draw an inference in the backdrop of this factual position as to the commission of an offence by the appellant. The strained relations between the husband and the wife led to their separation. The appellant had driven the informant out of the house. The informant, who is the mother of four children, was forced to stay with her brother in Mumbai. The efforts made by the brother and maternal uncle of the informant, 15 days prior to this incident to convince the appellant had failed. The appellant, as can be seen from the record, had no grievance with her children. Similarly, the children also had no grievance against their father. They preferred to stay with the appellant. It seems that the only thing that was bothering the appellant was the behaviour of the victim-girl. The informant, in her cross-examination, has by and large supported that everything was not well with the victim. A few days prior to the incident, the victim had gone missing. The report was lodged by her mother. In my view, all these are the doubtful circumstances. It is not the case of the informant that, prior to this incident, the victim was sexually abused by the appellant. In my view, therefore,

the material on record creates doubt in the mind of the Court about the occurrence of this incident. The defence of the appellant, if appreciated in the teeth of admitted and undisputed facts, would show that it is probable. The defence is further fortified by not examining Mr. and Mrs. Hakkani by the prosecution. In this view of the matter, I conclude that the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt.

24] The learned Judge has observed in his judgment that the presumption under Section 29 of the POCSO Act would trigger in this case. In my view, the very edifice of the above finding would collapse, the moment a conclusion is arrived at that the evidence on record is not sufficient to prove the guilt of the accused beyond reasonable doubt. The presumption under Section 29 of the POCSO Act is not an absolute presumption. It is a rebuttable presumption. The presumption gets triggered only when the foundational facts are established by the prosecution beyond reasonable doubt. The evidence on record must be sufficient to believe the case of the prosecution and thereby support the very foundation of the case of the prosecution. In this case, the very foundation of the case of the prosecution viz-a-viz the charge against the accused has been shaken. In my view, therefore, the

presumption under Section 29 of the POCSO Act would not trigger automatically.

25] In view of the above, I conclude that the prosecution has miserably failed to prove the charge against the appellant. Learned Judge has failed to consider all these aspects in proper perspective and has come to a wrong conclusion. This appeal deserves to be allowed. Hence, 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 Special Judge, Special Court (POCSO), Chandrapur, dated 17.08.2022, in Special (POCSO) Case No.62/2019, is quashed and set aside.
- iii] The appellant/accused – Dayanand S/o. Malikarjun Khandare is acquitted of the offences punishable under Section 4(2) of the Protection of Children from Sexual Offences Act, 2012 r/w Sections 376(2)(f) and 376(3) of the Indian Penal Code, 1860, and under Section 506 of the IPC.
- iv] The appellant/accused Dayanand S/o. Malikarjun Khandare is in jail. He be released forthwith, if not required in any

other case/crime.

v] The High Court Legal Services Sub-Committee, Nagpur, shall pay the fees to the learned advocate appointed for respondent No.2, as per Rules.

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

(G. A. SANAP, J.)

Vijay