



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

CRIMINAL APPEAL NO. 138 OF 2024

Taku @ Sagar Dayanand Shinde
Age: 27 years, Occu.: Nil,
R/o. Deulgaon Ghat, Tq. Ashti,
Dist. Beed.

... Appellant

Versus

1. The State of Maharashtra
Through the Ambhora Police Station,
Ashti, Tq. Ashti, District Beed.

2. X Y Z

... RespondentS

.....
Mr. Girish V. Wani, Advocate (appointed) for Appellant
Mr. C.V. Bhadane, APP for Respondent No.1 – State
Mr. Rupesh Jaiswal, Advocate (appointed) for Respondent No.2

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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 06 FEBRUARY, 2025
PRONOUNCED ON : 10 FEBRUARY, 2025**

JUDGMENT :-

1. Appellant/convict takes exception to the judgment and order dated 27.03.2023 passed by learned Special Judge (POCSO), Beed in Special POCSO Case No.74 of 2021 recording guilt of the appellant for offences under Section 376(AB), 376(2)(f) and 377 of the Indian Penal Code read with Section 6 of the POCSO Act.

PROSECUTION CASE IN BRIEF

2. Ambhora Police Station, District Beed registered the crime bearing No.150 of 2022 for above offences on report received from the mother of the victim, who gave information to police that her victim daughter aged 7 years was sexually ravished and exploited by the present appellant, who happens to be her uncle. On above report, crime was registered, investigated and appellant was chargeheeted for the above offence and finally tried by learned Special Judge, who examined as many as 11 witnesses, and on appreciating oral evidence of witnesses and on appreciating documentary evidence apprising of FIR, medical papers, birth certificate, etc., learned trial Judge accepted the prosecution story and recorded guilt holding appellant guilty for above offences.

Feeling aggrieved by the judgment and order of conviction, instant appeal has been preferred on various grounds mentioned in the appeal memo.

SUBMISSIONS

On behalf of appellant :

3. Learned counsel for the appellant pointed out that there is false implication. That, there is no cogent, reliable, trustworthy

evidence. That, report is lodged on information allegedly given by the mother of the victim. He pointed out that, on the alleged dated, there was some ritual of 7th day of death of grandfather of victim. That, almost 200 guests had gathered, but none of them has been examined, nor did any of them report the incident to police. Learned counsel pointed out that, victim was playing for the entire day. That, there is no prompt reporting. That, there is dispute for giving land for cultivation, and as such, there is possibility of false implication. For all above reasons, he questions the findings and conclusion reached by the learned trial Court and prays to allowed the appeal by giving benefit of doubt.

On behalf of State :

4. Learned APP, who strongly opposed pointed out that, victim was barely of 7 years of age. That, the present appellant is the paternal uncle. That, he allegedly took the victim onto his lap and inserted his penis into her anus. That, there are blood stains in the leggings of the victim. That, immediately after the incident, victim has reported to her mother and she is also noticed the blood stains. That, police have duly approached and registered the crime. That, victim was examined medically. Therefore, there is statement of both

informant-mother as well as victim and other witnesses. That, their evidence has remained intact, undisturbed or undiminished. That, there is nothing to suggest false implication and as charges are squarely proved, learned APP submits that there no need to disturb the sound and reasoned judgment recorded by the learned trial Judge.

On behalf of Victim :

5. Learned Counsel appointed to represent the victim also strongly objected. According to him, victim was proved to be 7 years of age. Even according to him, medical evidence is supports the prosecution case. That, grave offence has been committed on minor by the appellant, who is none other than paternal uncle. At the end, he supports findings and reasons assigned by learned trial Court in convicting appellant.

STATUS AND ROLE OF PROSECUTION WITNESSES

6. In support of its case, prosecution has examined as many as five witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 Seema is mother of the victim. At Exhibit 26/C, she deposed as under as under :

"1] I am residing with my husband, in-laws and my children

at the above address. Victim is my daughter. At the time of lodging FIR my daughter was 7 years old and she was studying in 2nd standard. I know the accused he is the cousin brother of my husband. The name of father of accused is Dayanand Shinde. Accused and his family members are our neighbour. Date of birth of my daughter i.e. victim is 04/02/2014. She born at Cantonment Hospital, Ahmednagar at my maternal home. After the birth of my daughter, we have registered her birth with the Cantonment Municipal Council, Ahmednagar. During the investigation, I have handed over the original birth certificate to police. Now, I am shown the original birth certificate of my daughter, issued by Cantonment Municipal Council, Ahmednagar, in which date of birth of my daughter is mentioned as 04/02/2014, it also appeared my name and my husband and its registration dated is 11/02/2014. Its contents are true and correct. It is marked as Exh. 27.

2] The incident happened with my daughter on 05/06/2021. On that day, there was post death 7 day of my grand-father-in-law. All the relatives and other guest wore arrived at our home. The sister of accused along with her two small children were also came. My daughter/victim went at the house of accused for playing with the children of sister of accused. At about 2:30 p.m., my daughter/victim returned home. She asked me change her legin. I had seen blood stain on her legin and leg. I took my daughter/victim in the room where my mother-in-law and sister-in-law was sitting. My mother-in-law inquired with my daughter/victim and they asked her where she went. My daughter/victim informed that she went to play with the toddler of Chakuli. She informed that accused to whom victim called Thaku Kaka removed her pant, he made her sit on his thigh and he inserted his penis in her anus. She was having pain and she was crying. Therefore, I along with my mother-in-law and my husband went at the house of accused.

We went at the house of accused he was not present there. Meantime some one called the police, therefore, police came to at our village. Thereafter, police send us at the Government Hospital Ahmednagar, for giving treatment to my daughter/victim. Doctor had done medical examination of my daughter/victim in my presence. After medical examination my daughter/victim, we went to police station Ambhora, Taluka Ashti, District Beed. At police we lodged the complaint against the accused. Now, I am shown the complaint, is the same. It was recorded as per my say. It bears my signature. Its contents are true and correct. It is marked as Exh. 31. Now, I am shown the proforma of FIR, is the same. It bears my signature. Its contents are true and correct. It is marked as Exh. 31/A.

3] After lodging the FIR, under panchanama I have handed over clothes of my daughter/victim which she wore at the time of incident. I am able to identify the cloths if shown to me. Now, I am shown black and brown colour legin is the same. It is marked as article-1. Now, I am shown one orange blue and off white colour big cheks frock is the same. It is marked article-2.

4] Next day, police came to our village to draw the spot panchanama. I have shown the place to the police. Police recorded my supplementary statement on 07/06/2021. Thereafter, police also referred me before the Id. Magistrate for recording my statement. My statement came to be recorded before the Magistrate as per my say. Now, I am shown my statement recorded before the Magistrate Court at Ashti. It was recorded as per my say. It bears my signature. Its contents are true and correct. It is marked as Exh. 32. On 07/06/2021, police recorded the statement of my daughter/victim in my presence. Accused is the same, present before the Court sitting in the dock.

PW2 Victim deposed at Exhibit 35 as under :

“1] At present I am in 3rd standard. I am residing with my parents, grand-mother and brother. I like to play with doll and utensils. At the time of incident, I was in 2nd standard. On the day of incident, there was post death 7th day of my grand-father to whom I called Dada. On that day all the guest were came at our house. In the afternoon, I went to play with Pillya. At that time Taku Kaka (Accused) called me for reading book. I went at the house of Taku kaka. At that time beside me and Taku kaka no one was there. Taku kaka removed my pant. He also removed his pant and he put his place of urinal in my anus. I had a pain Therefore, I was crying. Thereafter, I returned to my home. My mother asked me the reason of crying and took me to my grand-mother. Mummy and my grand-mother took smell of my pant. Then, both of them went at the house of Taku kaka.

2] Police madam inquired with me. Police also referred me at Nagar hospital for examination. Police also referred me before Ashti Court for recording my statement. Judge Sir, inquired with me and recorded my statement. Accused produced through V.C. Victim identified the accused.”

PW3 Bharat Gavande has acted as pancha to spot panchanama**Exhibit 38 :**

“1] I am serving as teacher in Z. P. Primary School, Deolgaon Ghat. Taluka Ashti. On 06/06/2021, I was present at my house, at that time I have received call from PSI Lokhande. He asked me to remain present at the spot. Thereafter, I went to Vitthalwadi Vasti. At that time, another panch Changdeo Shinde was also present. IO along with police officer, informant along with her daughter/victim were also present. Informant showed the spot. The spot of incident is the house of Dayanand Shinde.

The said room was locked, police opened the said lock in my presence. We entered in the said house. There was koba flooring, roof of the said room was of tin shade. There were blood stains on the koba flooring. Police soaked said blood stains in the cotton cloth and seized and sealed in front of us. Accordingly, police prepared spot panchanama in our presence. After going through the contents I have signed on the said panchanama. Now, I am shown the said panchanama, is the same. It bears my signature at serial no. 1, at serial no. 2 it bears the thumb impression of another witness and counter signed by IO. Its contents are true and correct. It is marked as Exh. 38.”

PW4 Krushna has acted as pancha to seizure of clothes of victim as well as accused vide panchanama Exhibits 45 and 49 respectively. He deposed as under :

“1] I am working as a driver at PWD, Asht. On 05/08/2021, due to Covid-19 my vehicle was on requisition, therefore, I was attached to Ambhora Police Station. On 05/06/2021 at about 9:00 to 9:30 P.M. police seized the cloths of victim girl in my presence. The mother of victim girl handed over the said clothes to Police. It was one legin and one frock. I am able to identified the said clothes if shown to me. Now. I am shown black and brown colour legin is the same. It is already marked as Article-1. Now, I am shown one orange blue and off white colour big checks frock is the same. It is already marked Article-2. Police sealed the said clothes in one big envelop and sealed the same. Police affixed the label of signature of we panchas on the said envelop Accordingly, police drawn the panchanama in my presence. Now, I am shown label affixed on the envelop of Article-1/A, is the same. It bears my signature at serial no. 1. It is marked as Exh. 43. Now I am showm label affixed on the envelop of Article-1/B, is the same. It bears my signature at serial

no. 1. It is marked as Exh. 44

2] Thereafter, police prepared panchanama and took my signature on the panchanama. Now, I am shown said panchanama, is the same. It bears my signature at serial no.1. Signature of another panch Navnath Bhoje is at serial no. 2 and countersigned by IO. It also bears thumb impression of, accused. Its contents are true and correct. It is marked as Exh. 45.

3] On 06/06/2021, I was also attached to Ambhora Police Station. The relatives of the accused brought the clothes. Whatever the clothes accused wore he changed the said clothes and handed over the clothes to the Police in my presence. It was one T shirt, night pant and one underpant having red colour stains. Accordingly, police prepared the panchanama. Now, I am shown one sky blue colour T shirt, is the same. It is marked Article-3, Police seized the sky blue colour T shirt in one big envelop and affixed the label of signatures of we panchas on it. Now, I am shown the label affixed on the envelop of Article-3. It bears my signature at serial no.1. Its contents are true and correct. It is marked as Exh. 46. Now, I am shown one black colour night pant. which was seized in my presence, is the same. It is marked Article-4. Police seized one night pant in one big envelop and affixed the label of signatures of we panchas on it. Now, I am shown the label affixed on the envelop of Article-4. It bears my signature at serial no.1. Its contents are true and correct. It is marked as Exh. 47. Now, I am shown purple colour underpant with red colour stains, which was seized in my presence, is the same. It is marked Article-5. Police seized the one purple colour underpant with red colour stains pant in one big envelop and affixed the label of signatures of we panchas on it. Now, I am shown the label affixed on the envelop of Article-5. It bears my signature at serial no.1. Its contents are true and correct. It is marked as Exh. 48.

4] Thereafter, police prepared panchanama and took my signature on the panchanama. Now, I am shown cloth seizure

panchanama of accused, is the same. It bears my signature at serial no.1. Signature of another panch Navnath Bhoje is at serial no. 2 and countersigned by 10. It also bears thumb impression of accused. It's contents are true and correct. It is marked as Exh. 49. Accused is the same present before the Court who has handed over the clothes to Police.”

PW5 Dr. Sachin Solat, was the Medical Officer, Government Hospital, Ahmednagar, who had conducted the medical examination of victim and prepared medical report and MLC certificate at Exhibits 56 and 57 respectively.

“1] My education qualification is MBBS MD DCH. Since 2016, I am attached to Government Hospital, Ahmednagar. On 05/06/2021 I was on duty at Casualty in Government District Hospital, Ahmednagar. On 05/06/2021, LPC Khandagale attached to Ambhora Police Station she brought victim with her and also brought one letter for examination of 7 years old victim. Now, I am shown the said letter is the same. It addressed to our Hospital. It bears my acknowledgment. Its contents are true and correct. It is marked as Exh. 54.

2] The victim was also accompanied with her mother. Victim brought before me at 4:30 p.m. Accordingly, I have prepared the OPD paper of the victim. Now, I am shown the O. C. of OPD paper. It is vide MLC No. 2750. It bears my signature. Its contents are true and correct It is marked as Exh. 55.

3] After obtaining the consent of the mother of victim. I have examined her. Victim narrated the history accused Taku removed her pant, he also pulled down his pant a little. He made her sit on his lap. He put his penis in her anus.

4] *I have called on call Gynecologists Dr. Ghugare and surgeon Dr. Gajanan Wangal. He was also with them at the time of examination of victim. I have examined victim along with both the doctors in presence of female nurse. I have obtained the consent of mother by taking her signature and thumb impression of the child. I have noted down the identification mark of the victim girl.*

5] *Thereafter, I took her medical history. I have found that she has not yet started her menses. She had received all her vaccination till 5 years of her age. Thereafter I have noted down the history of sexual violence. The time of incident 2:30 p.m. at Devalgaon Ashti. Name of assailant told by child Sagar Dayananad Shinde to whom she was called as Taku Kaka. The age of the accused is 24 years and he is her paternal uncle. Thereafter, victim narrated the history as stated above. Uncle lured her by showing mobile and book. In detail girl told that there was penetration in the anus. But, she did not know about emission of semen. She also told that the perpetrator exhibit his genital and accused also touched her lips, mouth and thighs. When asked she didn't know whether the condom was used or not. After the incident victim didn't change her clothes, didn't wash the clothes. She also didn't take bath. She also didn't pass urine stools. She has taken water and food after the incident.*

6] *At the time of examination the time since incident was 2 hours. The anal bleeding was present. The child didn't have fever and other general examination was within normal parameters. She had mild pain and tenderness in lower abdomen. No any other external injury found anywhere on the body. Blood stains was seen on the left leg on medial malleolus. On anal examination, it was found that there were two torn linear ulcer one at 5 o'clock position and other at 7 o'clock position. The wounds were fresh. But, no active bleeding was present at the time of examination.*

7] *After that we collected the swab from anus. Swab of blood*

stain on left ankle. Blood in plain bulb. Blood in citrate bulb. Nail clipping of the girls and Vulval swab. The samples were sealed label and handed over to Police. The clothes of the girl were also sealed and handed over to LPC Khandagale, Ambhora Police Station.

8] I have given treatment to the child. I have prepare the said report in my hand-writing. Now, I am shown pink colour medical papers vide MLC no. 2750 dated 05/06/2021. Page no. 1 to 8, 11 and 13 it bears my signature. Page no. 9, 10 and 12 is bears my signature and signatures of Gynecologists Dr. Ghugare. Its contents are true and correct. It is marked as Exh. 56 and I have given my opinion that there was no sign of physical violence, However, there was sign suggestive of recent forceful sexual anal intercourse or violence. Final opinion will be given after the report of FSL. I have gone through the FSL report, the blood stains in the legins of the girl belong to accused Sagar Dayananad Shinde. My final opinion is that there was sexual assault on the victim by accused Sagar Dayananad Shinde. I have also prepared the MLC certificate of the victim girl. Now, I am shown said certificate dated 05/06/2021. It is in my hand-writing. It bears my signature. Its contents are true and correct. It is marked as Exh. 57.'

PW6 Rahul Lokhande, PSI, who has recorded the complaint of the informant.

PW7 Dr. Sachin Palwade, was the Medical Officer, PHC Dhamangaon, who had conducted the medical examination of the accused and prepared medical report at Exhibit 62.

"1] My education qualification is MBBS. Since 29/01/2021 to 30/06/2021, I am attached to PHC, Dhamangaon, Taluka Ashti. On 07/06/2021, on was in 24 hours duty from 9:00 a.m. to next day

9:00 a.m. On 07/06/2021, I have received letter from Ambhora Police Station dated 06/06/2021 for medical examination of accused Taku @ Sagar Dayanand Shinde. Now, I am shown the said letter, it bears my endorsement. Its contents are true and correct. It is marked as Exh. 61.

2] Accused brought before me on 07/06/2021 at about 12:30 afternoon by API D. B. Kuklare in CR No. 150/2021 lodged with Ambhora Police Station. First I have obtained the consent of accused by taking his signature in presence of witness. Thereafter, I have noted down identification mark of the accused mole on the left on the second finger and mole on the nose on the left side.

3] I have done the physical examination of the accused. I have done the local examination of genitals of the accused. I have examined his penis. I have verified the history of circumcision. I have examined his scrotum on which I have found scrotum is pendulous. Both the testis present in his scrotum. I have also noted the injury on the prepuce of penis which is highly suggestive of forceful intercourse.

4] I have prepared this medical report of the accused in my hand-writing. It bears my signature. Its contents are true and correct. It is marked as Exh. 62.

5] I have given provisional opinion after examining the Sagar Shinde that there is nothing to suggest that male examining is not capable for performing sexual activities. My final opinion is also same.

6] After examination, I have collected semen sample, pubic hair sample, nail sample and blood sample of the accused. Now, I am shown the OPD paper in which I have mentioned about the sample collection. It bears my signature. Its contents are true and correct. It is marked as Exh. 63. Accused is the same present before the Court to whom I have examined on 07/06/2021.”

PW8 Dnyaneshwar Kuklare, API, is the first Investigation Officer.

PW9 Rahul Gurkhude, Police Head Constable, is the carrier, who submitted the blood samples of accused at FSL Aurangabad.

PW10 Salam Ahmed, Police Naik, is the carrier API, who has deposited the clothes of victim and accused along with their samples collected by medical officer.

PW11 Rani Sanap, PSI, is the first Investigation Officer.

ANALYSIS

7. Witnesses can be grouped in the following categories:

First set - informant-mother and victim;

Second set comprising of Medical experts, and;

Third set comprising of panchas, police official, etc.

Their examination in chief has already been reproduced in aforesaid paragraphs.

8. Here, considering the nature of the accusations and charges, the testimony of the informant-mother, and particularly the medical experts, is of significant importance. However, before adverting to their evidence, at the outset, it needs to be ascertained whether prosecution has discharged burden of framing the victim to be minor

as there are allegations of POCSO Act.

9 Here, informant-mother while deposing had placed on record very original birth certificate issued by the Health Department, Government of Maharashtra and it is marked as Exhibit-27. It is in original form. The date of birth of victim is shown as 04.02.2014, and alleged occurrence is of 05.06.2021. Therefore, taking both such dates into consideration, victim is proved to be a minor on the date of occurrence having settled the issue of age. Now, it is to be seen whether further the allegations of offence alleged are substantiated by credible evidence.

10. Again, we have to follow back at the evidence of victim followed by informant-mother.

Victim is examined as PW-2, and in her evidence at Exhibit-35/C, she has stated that she is in 3rd standard, and at the time of the incident she was in 2nd standard. She testified that, on the day of the incident, it was the seventh day after the death of her grandfather, and as such, all the guests had gathered at their house. She claims that, in the afternoon, she went to play with others. At that time, present appellant to whom victim called Taku Kaka called her for reading book. She went in his house. She deposed that no one was

present there except her uncle. He removed her pant, he also removed his pant. She claims that he put his male organ in her anus. That, there was pain, therefore, she cried. She returned home and when her mother asked her the reason of crying. Both her mother as well as grandmother took smell of her pant and they went to the house of accused.

The victim is subjected to cross-examination. In paragraph 3 it is brought on record that, she was playing with others. She denied about any quarrel between anyone or even any quarrel between elders. Then, she answered in paragraph 4 that after the programme, police had come to the house and had conversation with her. She totally denied that her father and mother told her what to tell the police. Rest is all denial.

11. PW-1 informant-mother, is examined at Exhibit-26/C. She also stated that the incident happened to her daughter on 05.06.2021. There was 7th post death ritual of her father-in-law. She claims that, at 2:30 p.m., her daughter returned home, who asked to change her leggings. She claims that, she saw blood stains on her leggings and leg, and therefore, she and her mother-in-law as well as sister-in-law inquired with the victim as to whether she had been. Her daughter allegedly told her that accused to whom she called Thaku Kaka

removed her pant and inserted his penis in her anus. She was having pain and she was crying, and therefore, victim was taken to the house to the appellant, but he was not present. Meanwhile, police had come and recorded her say, the same is identified by her at Exhibit-31.

Above witness is also extensively cross-examined. Relevant cross is on aspects of function held on 7th day of death of her father-in-law, strength of witness arriving, timing of having lunch, distance of house of accused from the said place, and whether he owns land. She denied that agricultural land which they were cultivating owned by Dagdu Shinde, and the said Dagdu Shinde asked to return the land. Then, she is questioned when police arrived and when panchanama was drawn and on what time the statement of the victim was recorded. Here, cross is also by way of question and answer form as to whether the lady officer came to record the statement of the victim, whether victim was stating anything or not. However, to such question, she answered 'yes', but that clarified as she was in a frightening condition. Rest is all denial.

Therefore, evidence of victim as well as mother, on the aspect of victim being taken by appellant to his house, he inserting his male organ in her anus and consequently she bleed, has virtually remained

intact.

12. On above lines, now it is to be seen whether there is medical evidence suggesting an occurrence. On this point evidence of PW-5 Dr. Sachin Solat is relevant. In his evidence at Exhibit-53/C, he deposed about victim came with her mother as well as LPC attached to Ambhora Police Station and on obtaining consent of mother, he noted history, which was reported by victim that, the appellant removed her pants, also pulled down his own pants, made her sit on his lap, and inserted his penis into her anus. Therefore, this medical expert claims to have called Gynecologists Dr. Ghugare and surgeon Dr. Gajanan Wangal, and victim was examined by both the doctors. He again stated that victim narrated history in the presence of both these doctors.

In paragraph 6 of his testimony, he stated that, he noticed anal bleeding, and there was mild pain and tenderness in lower abdomen. There were blood stains appeared on the left leg, and on anal examination, it was found that there were two torn liner ulcer one at 5o' clock position and other at 7o' clock position, and said wounds were fresh. Necessary swab of anus as well as blood along with nail clipping of the girls and vulval swab were collected. The said samples were sealed label and handed over to police.

He has opined in paragraph 8 that, treatment was given and to the child, and after seeing the FSL, in his opinion the blood stains on the leggings of the girl were of the present appellant, and as such, he issued a final opinion that there was sexual assault on the victim, and he identified the MLC certificate at Exhibit-57.

Though the above medical expert is cross-examined, there is a question whether the victim herself narrated the history, and he answered in affirmative, but further stated that, it was also reported by grandmother. He virtually denied the injuries on anus to be possible due to constipation. It is also brought in cross that, clothes of the victim were handed over to the police, and the same were sealed.

13. Another medical witness is PW-7 Dr. Sachin Palwade, who has examined the accused and he claims that, on physical examination, he noticed injury on the prepuce of penis, which is highly suggestive the forceful intercourse. Examination of accused was done on 07.06.2021 itself. He also opined that accused was very much capable of performing sexual activities. Nothing adverse has been brought in cross of this doctor.

Rest of the witnesses are police officials, who has deposed about participating in investigation in various capacities.

CONCLUSION

14. Therefore, on re-appreciation of above evidence, there is credible evidence of both victim as well as her mother. There is prompt lodgment of complaint, medical evidence suggesting sexual assault. There is confirmation of the same from medical experts. There are injuries on the person of victim as well as accused. Therefore, when all necessary ingredients are available in the form of oral as well as credible documentary evidence in the form of medical evidence, the view taken by the learned trial Judge is the only possible view that could emerge even on the re-appreciation. Points raised in argument have no merit and substance, or any foundation. Resultantly, there being no merit in the appeal, appeal deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

- (I) Criminal Appeal No.138 of 2024 stands dismissed.
- (II) Fees of the learned Advocate appointed to represent respondent no.2 is to be paid through the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

(**ABHAY S. WAGHWASE**)
JUDGE