



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

CRIMINAL APPEAL NO.148 OF 2022

Gopal S/o. Manik Biradar,
Age : 35 years, Occu : Agriculture,
R/o. Mategadi, Tal. Deoni, Dist. Latur

... Appellant
(Accused)

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Deoni,
Tal. Deoni, Dist. Latur

2. XYZ

... Respondents

....
WITH

CRIMINAL APPLICATION NO.3884 OF 2024

IN

CRIMINAL APPEAL NO.148 OF 2022

....

Shri. V. D. Gunale, Advocate for the Appellant
Shri. A. D. Wange, APP for the Respondent – State.
Shri. B. K. Patil, Advocate for the Respondent No.2 (Appointed through
legal aid)

....

CORAM : NEERAJ P DHOTE, J.

Reserved on : 08.12.2025

Pronounced on : 16.12.2025

JUDGMENT :-

. This Criminal Appeal is directed against the Judgment and Order dated 13.01.2022, passed by the learned Additional Sessions and Special Judge-2, Udgir in Spl. (POCSO) Case No.7/2019 convicting the Appellant for the offence punishable under Section 8 of the Protection of

Children from Sexual Offences Act (for short, 'POCSO') and sentencing him to suffer three (3) years Rigorous Imprisonment and fine of Rs.15,000/- (Fifteen Thousand), in default to undergo Rigorous Imprisonment for three (3) months, and further convicting him for the offence punishable under Section 354A(1) of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and sentencing him to suffer Rigorous Imprisonment for six (6) months and fine of Rs.10,000/- (Rs. Ten Thousand), in default to undergo Rigorous Imprisonment for one (1) month.

2. The Prosecution's case, in brief, as seen from the Police Report, is as under:

2.1. The Victim was studying in 7th Std. On 25.01.2019 in the morning she went to her school and after the school went to the house of her maternal aunt around 01:00 p.m. While returning to her village, she came to the bus stop at Dhanegaon at 05:30 p.m. At that time, the Appellant came on the Motorcycle and told her that, he was going to the village and asked her to sit on the Motorcycle. The Victim sat on the Motorcycle. On the way to the village, the Appellant stopped the Motorcycle around 06:00 p.m. for urination and he put his hand around the neck of the Victim and dragged her. The Victim managed to remove the hand of the Appellant from her neck and escaped. After reaching home, the Victim informed her Mother about the incident.

2.2. On the next day, the Victim's Mother took the Victim to the Deoni Police Station and lodged the Report against the Appellant and Crime bearing No.14/2019 came to be registered against the Appellant for the offence punishable under Section 354A(1) of the IPC and for the offence punishable under Sections 7 and 8 of the POCSO. During the course of the investigation, the Spot Panchanama was prepared, the Motorcycle of the Appellant came to be seized, the Statement of the Witnesses were recorded, the relevant documents came to be prepared, the Appellant came to be arrested and on completion of the investigation, the Charge-sheet came to be submitted.

2.3. On committal, the learned Trial Court framed the Charge against the Appellant for the above referred offences below Exh.5, to which the Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined the following witnesses:

- PW1 :- Rajkumar Balwant Dhanegave, the Spot Panch
- PW2 :- Madhukar Suryabhan Digole, the Panch Witnesses
- PW3 :- Mother of the Victim
- PW4 :- Victim
- PW5 :- Gajanan Vijay Ansapure, the Investigating Officer

2.4. After the Prosecution filed the evidence closure *purshish*, the learned Trial Court recorded the Statement of the Appellant under Section 313 (1)(b) of the Code of Criminal Procedure (hereinafter

referred to as the 'Cr.PC.'). The Appellant stated that, he was falsely implicated. The learned Trial Court, on appreciating the evidence on record, passed the impugned Judgment and Order convicting and sentencing the Appellant as above.

3. It is submitted by the learned Advocate for the Appellant that, the material testimony is that of the Victim. The age of the Victim is not disputed. Her evidence do not show the sexual intent on the part of the Appellant. Even if her evidence is accepted as it is, the essential ingredients for the offence under which the Appellant is convicted are not made out. The Appellant gave explanation in the Statement recorded under Section 313 of the Cr.P.C. The learned Trial Court wrongly appreciated the evidence on record. The Appellant was entitled for acquittal. In support of his evidence, he relied on the Judgment of this Court in *Ravindra vs. State of Maharashtra, through PSO Katol*, 2025 SCC OnLine Bom 2530.

4. It is submitted by the learned APP that, the age of the Victim is not disputed. The testimony of the Victim show that, she managed to escape from the custody of the Appellant. The incident was reported to the Police on the very next day. There are no suggestions in Cross-examination that, the Appellant was falsely implicated. The learned Trial Court has rightly convicted the Appellant and no interference is called for in the impugned Judgment and order.

5. It is submitted by the learned Advocate for the Respondent No.2 – Victim that, the age of the Victim at the relevant time is proved. The Victim got saved as she managed to escape. The incident was of the evening. On the next day the Report was lodged. There is no suggestion that the Appellant was falsely implicated. The Judgment relied by the learned Advocate for the Appellant is on different facts. The learned Trial Court has rightly convicted and sentenced the Appellant.

6. According to the Prosecution, the Victim was a Child. The conviction is for the offence under the provisions of the POCSO. Section 2(d) of the POCSO defines the term “Child”; the “Child” means any person below the age of eighteen years. The Appellant admitted the extract of the admission register of the Zilla Parishad Primary School, Dhanegaon. Tal. Deoni showing details of the Victim i.e. name, date of birth etc. As the said document is admitted by the Appellant before the learned Trial Court, the same can very well be read. In the said document, the date of birth of the Victim is shown as 08.06.2006. The said document is of primary school. The evidence of the Victim show that, the date of incident was 25.01.2019. The evidence of the Victim who is examined as PW4 show that, she took the primary education in Zilla Parishad School, Dhanegaon. The evidence of PW3 i.e. Mother of the Victim and the Informant show that, the Report was lodged on

26.01.2019 for the incident dated 25.01.2019. The evidence of PW5 – Gajanan Ansapure, the Investigating Officer, show that the crime was registered on 26.02.2019. There is no challenge to the said evidence. In view of this evidence on record, it is proved that, the Victim was the Child at the relevant time i.e. on the date of incident.

7. The case of the Prosecution hinges on the testimony of the Victim. Her evidence show that, on 25.01.2019 at 08:00 a.m. she had gone to the School at Dhanegaon by school bus, at that time she was studying in 7th std. Around 01:00 p.m. her school was over and she went to her maternal aunt. Thereafter around 05:30 p.m., she went to the Dhanegaon bus stand for going to the village. When she was at the bus stand, the Appellant came to her and enquired as to where she was going. The Victim replied that, she was going to the village. The Appellant told her that, he was going to the village and asked her to accompany him. Therefore, she sat on the motorcycle. The motorcycle proceeded towards the village via Helamb village. On the bridge near the village, the Appellant stopped his motorcycle around 06:00 p.m. The Appellant told her that he was going for urination and put his hand around her neck (English recording of evidence reads '*put his hand in my neck*' and the Marathi version reads '*माझे गळ्यात हात टाकला*') and dragged her by the side of road. The Victim removed the hand of the Appellant from her neck and ran away. The Victim told her Mother

about the said incident. The Victim identified the Appellant before the learned Trial Court. The Cross-examination show that, the Appellant was known to her. The suggestion of false implication is denied. She denied the suggestion that, after discussion with the relatives the Report was lodged. The testimony of the Victim is natural. Nothing has come in the Cross-examination of the Victim to create any doubt in her testimony. Nothing has come in her evidence to show that her testimony was inconsistent to her version given to the Police.

8. The testimony of PW3 show that, she was the Mother of the Victim. The Victim narrated the incident to her. Her evidence show that, on the next day there was flag hoisting ceremony on account of Republic Day and after the function she along with the Victim went to the Deoni Police Station and lodged the Report below Exh.16. Her Cross-examination show that, the Accused was known to her as she had worked as labourer for him. Her evidence was consistent with her Report lodged with the Police. She denied the suggestion that, due to non-payment of wages to her, she had threatened to recover money from the Appellant and therefore lodged the false Report in respect of false incident. She further denied that, due to Grampanchayat election and quarrel between her and the Appellant, the false Report was lodged. Nothing has come in her Cross-examination to discard her testimony.

9. The evidence of PW5 – Gajanan Vijay Ansapure, Investigating Officer, speak of the investigation done by him. His evidence show that, it did not transpire during the investigation that the relation between the Informant and the Appellant were strained due to financial transactions. He denied suggestion of filing false Charge-sheet. In the Cross-examination, it has come that, one offence of committing theft of sand was registered against the Appellant and the Appellant took away the tractor which was seized by the Police from the Police Station without any permission. Though the Spot Panchanama witnesses were examined by the Prosecution as PW1 - Rajkumar Balwant Dhanegave and PW2 – Madhukar Suryabhan Digole, they did not support the case of the Prosecution. The evidence of the Investigating Officer show that, the Spot Panchanama was prepared below Exh.23 and the Motorcycle used in the Crime was seized under the Panchanama below Exh.24.

10. The Victim's evidence clearly describes the incident. It is clear from her evidence that, she knew the Appellant. The act of the Appellant of approaching her and asking her to come with him to the village on the motorcycle and stopping the Motorcycle on the bridge by saying that, he want to go for urination and putting his hand around the neck of the Victim and dragging her, show the sexual intent. He took disadvantage of the situation. Victim accompanied him as she knew him. As the intention is in the mind of the person, it has to be judged or

gathered from the acts. From the testimony of the Victim, the act committed by the Appellant is proved. It finds corroboration by the testimony of her Mother who lodged the Report. To say it in another words, the testimony of the Victim gets corroboration by the Report lodged by her Mother in respect of the incident. The sequence of the events as are clear from the testimony of the Victim, no other interference can be drawn except the one that, the acts of the Appellant was motivated by sexual intent.

11. In the above referred Judgment cited by the learned Advocate for the Appellant in *Ravindra (supra)*, the following are the observations:

“32. The expression “sexual intent” is a question of fact and it is to be determined on the basis of the evidence.

33. In order to understand intention of the accused behind such utterances, one has to look into the entire evidence of the prosecution.

34. Admittedly, “intention” is inner compartment of mind of that person and has to be determined from surrounding facts and circumstances. If somebody says that he is in love with another person or expresses his feelings itself would not amount to an “intent” showing some sort of his “sexual intention”. What constitutes such “sexuality” or “sexual intent” and what is not, is a question of fact.

35. While interpreting “sexual intent”, single judge bench of this court in the case of Bandu Vitthalrao Borwar vs. State of Maharashtra, thr. PSO, 2016 SCC OnLine Bom 16128 observed that perhaps understanding generally accepted meaning of words "sexual" and "intent" will help us in finding out an answer. Words 'sexual' and 'intent' have not been defined anywhere in the Act and, therefore, it would be useful to understand their meaning as are commonly understood in English language. For this purpose, a reference to the English dictionary would be useful. In Webster's New Explorer Encyclopedic Dictionary, 2006th Edition, the words 'sexual' and 'intent' have been defined on Page Nos.1683 and 959 respectively as under:

“Sexual” : 1 : of, relating to, or associated with sex or the sexes (sexual differentiation) (sexual conflict) 2: having or involving sex (sexual reproduction)”,

“Intent” : “1a : the act or fact of intending : PURPOSE; especially : the design or purpose to commit a wrongful or criminal act (admitted wounding him with intent)., and

b : the state of mind with which an act is done : VOLITION. 2 : a usually clearly formulated or planned intention : AIM 3a :MEANING, SIGNIFICANCE b : CONNOTATION”.

36. Thus, the state of mind, must be to establish some sort of physical contact or must be related to or associated with sex or indicative of involvement of sex in the relationship, if it is to be considered as sexual. Words uttered should be with “sexual intent” associated with indicative of involvement of sex or physical contact or expressing sexual overtures. Words expressed “I Love You” would not by itself amount to “sexual intent” as contemplated by the legislature. There should be something more which must suggest that the real intention is to drag in the angle of sex, if the words uttered are to be taken as conveying sexual intent. It should reflect by the act.”

12. The said decision was on entirely different facts. The facts in the case at hand are different. Examining the proved facts of this case in the light of the above referred observations from the said Judgment, the act of the Appellant clearly show the sexual intent on his part involving physical contact with the Victim. The above discussed evidence on record makes out the essential ingredients for the offence of sexual assault as defined under Section 7 and punishable under Section 8 of the POCSO and Section 354A(1) of the IPC which are in respect of sexual harassment. As the essential ingredients for the above referred sections are clearly made out from the evidence on record, the presumption under Section 29 of the POCSO comes into play or operation. Except denial and contention of false implication, there is nothing to show that the Appellant was

successful in rebutting the presumption. In his Statement under Section 313 (1)(b) of the Cr.P.C., it is stated by the Appellant that, he was married and having two children and due to the quarrel and for the reason of taking over the tractor from the Police Station, the Informant and the Police falsely implicated him. The defence taken by the Appellant is not probable in the light of the clear, cogent and unshaken evidence of the Prosecution. The learned Trial Court has imposed the minimum sentence for the proved offences. I find no merit in the Appeal and the same is liable to be dismissed, hence the following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) Record and Proceedings be sent to the learned Trial Court.
- (iii) Pending Application stands disposed off.
- (iv) The fees of the learned Advocate appointed through legal aid to represent Respondent No.2 – Victim is quantified at Rs.10,000/- (Rs. Ten Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

(NEERAJ P. DHOTE, J.)

GGP