



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

**CRIMINAL APPEAL NO.143 OF 2021 WITH  
CRIMINAL APPLICATION NO.2443 OF 2021**

Maroti s/o Madhav Tikekar,  
Age 40 years, Occ. Labour,  
R/o Savergaon Mal, Tq. Bhokar,  
Gandhewar Colony, Bhokar,  
Tq. Bhokar, Dist. Nanded

**... APPELLANT**

**VERSUS**

1. The State of Maharashtra  
Through Police Station, Bhokar,  
Tq. Bhokar, Dist. Nanded  
(Copy to be served on the  
Public Prosecutor, Bombay High  
Court, Bench at Aurangabad)

2. X Y Z

**... RESPONDENTS**

.....  
Ms Ashwini A. Lomte, Advocate for appellant (appointed)  
Mrs. S.N. Deshmukh, A.P.P. for respondent No.1.  
Mr. Satej S. Jadhav, Advocate for respondent No.1 (appointed)  
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**CORAM : R.G. AVACHAT AND  
NEERAJ P. DHOTE, JJ.**

**Date of reserving judgment : 20th January, 2025  
Date of pronouncing judgment : 21st February, 2025**

**JUDGMENT (PER : R.G. AVACHAT, J.) :**

The challenge in this appeal is to a judgment and

order of conviction and consequential sentence, passed by the Court of Additional Sessions Judge (Trial Court), Bhokar, District Nanded, in Special (POCSO) Case, No.7/2019. The material part of the impugned order of conviction and sentence reads thus :

- 01) Accused Maroti S/o Madhav Tikekar, Age 40 Years Occu. Labour R/o Savergaon Mal, Tq.Bhokar at present Gandhewar colony,Bhokar Tq.Bhokar Dist. Nanded is hereby convicted u/sec. 235(2) of Cr.P.C. for the offences punishable under sections 376(2)[f][i][j], 354(A)(1), 323, 504 and 506 of Indian Penal Code and Sections 4 and 6 of The Protection of Children from Sexual Offences Act, 2012.
- 02) Accused Maroti S/o Madhav Tikekar is hereby convicted u/sec. 235(2) of Cr.P.C for the offence punishable under sections 376(2)[f][i][j] and he is sentenced to suffer Life Imprisonment which shall mean the remainder of that person's natural life and to pay fine of Rs. 5,000/ (Rs. Five thousand only). In default of fine he shall undergo simple imprisonment of 6 months.
- 03) Accused Maroti S/o Madhav Tikekar is hereby convicted u/sec. 235(2) of Cr.P.C for the offence punishable under section 354(A)(1) and he is sentenced to suffer one year Rigorous Imprisonment and fine of Rs. 2,000/ (Rs. Two thousand only). In default of fine he shall undergo simple imprisonment of 3 months.
- 04) Accused Maroti S/o Madhav Tikekar is hereby convicted u/sec. 235(2) of Cr.P.C for the offence punishable under section 323 of Indian Penal Code and he is sentenced to suffer 6 months Rigorous Imprisonment and fine of Rs. 500/- (Rs. Five hundred only). In default of fine he shall undergo simple

imprisonment of 1 month.

- 05) Accused Maroti S/o Madhav Tikekar is hereby convicted u/sec. 235(2) of Cr.P.C for the offence punishable under section 504 of Indian Penal Code and he is sentenced to suffer one year Rigorous Imprisonment and fine of Rs. 1,000/ (Rs. One thousand only). In default of fine he shall undergo simple imprisonment of 3 months.
- 06) Accused Maroti S/o Madhav Tikekar is hereby convicted u/sec. 235(2) of Cr.P.C for the offence punishable under section 506 of the Indian Penal Code and he is sentenced to suffer one year Rigorous Imprisonment and fine of Rs.1,000/ (Rs. One thousand only). In default of fine he shall undergo simple imprisonment of 3 months.
- 07) Accused Maroti S/o Madhav Tikekar is hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec.4 and 6 of The Protection of Children from Sexual Offences Act, 2012, as offence under section 6 is aggravated and major offence therefore, I am giving punishment in major offence under section 6 of POCSO Act, and accused is hereby sentenced to suffer Life Imprisonment and shall pay fine of Rs.5000/- [Rs.Five thousand only] In default of fine he shall undergo simple imprisonment of 3 months.
- 08) All above substantive sentences shall run concurrently.
- 09) Accused is punished for life imprisonment which shall mean imprisonment remainder of that person's natural life, therefore question does not arise to give set off under section 428 of Cr.P.C to the accused.

2. The facts giving rise to the present appeal are as follows :-

The appellant married P.W.2 - "S" about 10 – 15 years before March 1, 2019. The couple was blessed with a girl child, who was little over 14 years of age at the material time. She is P.W.1 – "R" (name withheld). She was a student of 8<sup>th</sup> Standard. The appellant, his wife and the victim would reside together. His wife was not keeping well psychologically. The appellant was said to be addicted to liquor. For two months next before March 1, 2019, the appellant would behave with the victim inappropriately whenever his wife used to be away from their house. He would touch her inappropriately.

3. On March 1, 2019, the appellant told his mother that the doctor had asked him to bring cum from his daughter's private part for treating his cough. By little past 9.30 p.m., all of them went to sleep. The victim slept on a cot. Her parents slept on the floor. Thereafter, the appellant, in undressed condition, slept on the cot on which the victim was sleeping. He removed the clothes on the person of the victim and committed sexual intercourse. He beat up her mother and threatened both of them of dire consequences if the matter

was reported to police.

4. The victim decided to relate the incident to her teacher. As the examination of 10<sup>th</sup> and 12<sup>th</sup> Standard were underway, she could not meet her Teacher. On 12 March, when she got the appointment, she related everything to her Head Mistress and other teachers as well. On their suggestion, she approached Bhokar Police Station along with her grandfather and reported the matter. It was registered as First Information Report (F.I.R. - Exh.9).

5. A crime vide C.R. No.0052/2019 was registered for offences punishable under Sections 376(2)(f)(i)(j), 354(A)(1), 323, 504 and 506 of the Indian Penal Code and Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012

6. The crime was investigated. Crime scene panchanama was drawn. The appellant was arrested. Both, the appellant and the victim were medically screened. Clothes on the person of both of them were seized. All the seized articles were submitted to Forensic Science Laboratory (FSL).

Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against by filing a charge sheet.

7. The Trial Court framed the charge. The appellant pleaded not guilty. His defence was of false implication. According to him, his wife was not keeping psychologically well. Both, his wife and the daughter (victim) were residing along with the appellant's in-laws. Just four months before, the wife resumed cohabitation with him. The daughter (victim) too joined them. The grandfather wanted his daughter to have dissolution of her marriage. He and others had even assaulted the appellant. The appellant intended to lodge police report against him. With a view to avoid such prosecution, a false report has been lodged at the behest of his father-in-law.

8. To bring home the charge, the prosecution examined 10 witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the Trial Court passed the order impugned herein.

9. Heard. The learned Advocate appointed to represent the appellant would submit that, there was delay of not less than 12 days in reporting the matter to the police. The victim was subjected to medical screening 20 days after the incident. The medical evidence and Chemical Analyser's report do not reinforce the prosecution case. We were taken through the cross-examination of the victim and her mother to indicate as to how the appellant's father-in-law had influenced the victim to lodge the report against him.

10. It was also pointed out that the appellant's wife and the victim too did repent for filing of a false report. The same is evident from number of letters written by the victim to her father post conviction, and the affidavit filed by the victim's mother.

11. We are conscious of the fact that, post conviction material would hardly have any bearing on the fate of the appeal. The learned Advocate ultimately urged for allowing the appeal.

12. Learned A.P.P. would, on the other hand, submit

that, the victim was just 14 years of age. The appellant had threatened to kill her if she made the incident public. Since the examinations were going on, the victim could not meet the School Head Mistress or other Teachers for about 10 – 11 days. No sooner she got their appointment, she related everything to them. Our attention was also drawn to a circumstance during recording of the victim's evidence. She was shy of relating as to how the appellant did the alleged act. She, therefore, gave it to the Trial Court, in writing. The Trial Court observed the demeanor of the victim. She was weeping. The learned A.P.P. then took us through the evidence of the victim's mother and Teachers as well, to submit that the evidence of the victim has been duly corroborated. The school record (Exh.48) indicates the victim was a child at the material time. The medical evidence was also relied on to indicate the same to have been consistent with the prosecution case. On the ground of delay in lodging of the F.I.R., the learned A.P.P. has relied on the judgment of the Apex Court in case of **State of H.P. Vs. Shree Kant Shekari, AIR 2004 SC 4404**, wherein it has been observed :-

“In the instant case, teacher allegedly raped his student. She did not disclose the incident to anybody due to threats given by accused to her. Her mother knew about the incident when the victim girl became pregnant. FIR was lodged thereafter. The unusual circumstances in this case satisfactorily explained the delay in lodging of the First Information Report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging First Information Report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the Court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of First Information Report does not in any way render prosecution version brittle.”

The learned A.P.P. ultimately urged for dismissal of the appeal.

13. The learned Advocate appointed to represent the victim, in the first breath, would submit that, appreciation of the evidence may indicate the offence might have been

committed. He would submit that, the prosecution, to bring home the charge, was required travel a long from “may” to “must”. He would then submit that, subsequent repentance by the victim or her mother would be of little consequence on the merits of the matter. He then supported the prosecution case. It, however, appears that, the victim and her mother want the appeal to be allowed.

14. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

15. P.W.1 “R” testified that, her mother (P.W.2 “S”) was not keeping mentally well since she was one year old. Whenever her mother used to be out of house, the appellant (father) would touch her person improperly. He would abuse her in filthy language. It was March 1, 2019, she returned home from school. She took lunch. Did some study. In the evening by 9.30 p.m., her parents and she went to sleep. She went to sleep on the cot. Parents slept on the floor. The appellant came on her cot. He told her that doctor had asked him to bring liquid (cum) from her private part. Since her

mother was mentally ill, she believed the appellant. He (appellant) thereafter undressed himself. He then removed her undergarment and committed sexual intercourse.

16. The victim further testified that, on the following day, she went to the school. She made attempt to disclose her teachers the incident, but for the teachers were engaged in Xth and XIIth Standard examinations. She therefore, met Shaikh Madam, Manjramkar Madam and Bembare Madam on 11 March. She disclosed them the incident. On the following day i.e. on 12 March, she related the Head Mistress (Patil Madam—P.W.5) everything. On the instructions of the Head Mistress, she took her maternal grandfather to the school on the next day and then went to the Police Station and lodged the report (F.I.R. Exh.9).

17. During her cross-examination, she admitted that, her mother was not mentally keeping well since beginning. Her maternal grandfather was residing at Motinagar, Bhokar. Whenever there used to be quarrel between her parents, they used to reside with her grandfather. She admitted that, the appellant and her grandfather were not on talking terms. She

further testified that, the appellant would tell her grandfather that he wanted to contract second marriage since wife was not keeping sound mind. She went on to state that, her grandfather, therefore, threatened the appellant that he would see how her performs second marriage (implied threat). She denied that, 15 days before the incident, quarrel took place between the appellant and her grandfather. She further denied that the appellant had been thrashed by her grandfather. She, however, admitted that, her father had suffered fracture by that time. According to her, it was the result of fall. She denied that, her grandfather took her to the teacher and then to the Police Station and lodged the report with a view to teach the appellant lesson.

18. P.W.1 further testified that, just four months before the incident she along with her mother had started residing with the appellant. For a few years therebefore, they were residing with her grandfather. Rest of the questions were in the nature of denial of the evidence in examination-in-chief. She, however, admitted that, she attended the school regularly

since March 1 to March 11. Head Mistress Patil Madam was regularly attending the school.

19. The victim, while deposing before the Trial Court, was found to have been frightened and was shy to relate about the incident. She, therefore, gave in writing as to how did the appellant commit sexual act with her. The said writing was marked Exh.10. It has been stated therein that the appellant removed her undergarment and committed coitus.

20. P.W.2 "S" (mother of the victim) testified that, on the given day, the victim had slept on the cot. She along with her husband, were sleeping on the floor. Her husband (appellant) told her that the doctor had asked him to bring liquid (cum) from her private part. She further testified that, in the midnight, the appellant forced himself on the victim. She, therefore, abused him and pushed as well. The appellant did not allow her to go outside the house. She, therefore, could not relate her parents on cell phone. The appellant had even threatened her if the matter is made public.

21. During her cross-examination, she admitted that, her father and the appellant were not talking with each other. The appellant had told him that he wanted to contract second marriage. Her father would ask her to give divorce to the appellant. She, however, did not listen to him. The appellant did not allow her father to enter his house. Her father was not happy with the appellant. For about four years, she was staying with her parents. It was only six months prior to the incident she joined her husband (appellant). She was confronted with a police statement to bring on record an omission therein to the effect that she did not state that due to threat given by the appellant she could not relate the incident to anybody.

22. P.W.3 Shaikh Farida was the Assistant teacher in the school in which the victim was taking education. She testified that, the victim was waiting for 2-3 days to meet her. It was on March 12, the victim met her and told that her father (appellant) misbehaved with her. She further informed her that the appellant would inappropriately touch her person. The appellant would ogle at her. On one day, her mother was not

at house, that time the appellant tried to embrace her. Meantime the mother came. The appellant, therefore, relieved her. She further testified that, the victim was continuously weeping and was unable to make proper pronouncement of words. She and another teacher convinced her. It is further in her evidence that, on 13, the victim related the Head Mistress and on the following day, she came with her grandfather to the school. They told the grandfather to ensure immediate action was taken against the appellant.

During her cross-examination, she testified that, police recorded her statement on 19 March. The rest of the questions are in the nature of denial.

23. P.W.4 Chaya Kadam was the Head Mistress of Digambarrao Bindu Primary School, Bhokar. She produced in evidence an extract of school admission register, wherefrom the date of birth of the victim is disclosed as 7/6/2004. She further testified that, along with admission form, birth certificate was submitted. The school admission form was filled in by the victim's grandmother. The document is at Exh.19.

24. P.W.5 Surekha was the Head Mistress of Manjulabai Kinalkar Girls High School, Bhokar. She testified that, there were Standard X and XII examinations underway in first week of March 2019. She was told by another teacher that the victim was waiting for her. On March 13, when she came to her office, the victim and other teacher Manjrekar Madam were waiting for her. The victim started weeping. The victim related her that, for the last 2 – 3 months, she was suffering harassment at the hands of her father (appellant). She related her that the appellant would inappropriately touch her person. She further related her that the appellant did sexual intercourse with her as he used to do with her mother. She, therefore, asked the victim to come with her grandfather on the following day. She accordingly came. They asked the grandfather to take responsibility of the victim.

The cross-examination of this witness is in the nature of almost denial of her evidence in examination-in-chief.

25. P.W.7 Dr. Raju Tompe examined the appellant and certified him to be potent. The certificate is at Exh.31.

26. P.W.8 Dr. Mohan was the Medical Officer. He medically screened the victim on March 22, 2019. He recorded the history given by the victim (would be referred while appreciating the evidence). He testified that, on local genital examination, he found hymenal injury and old healed tear at 3, 6, 7 o'clock position. Thereafter he reserved samples of blood, pubic hair, vaginal swab and nails and its scrapping for chemical analysis and gave provisional opinion, that his findings consistent with sexual intercourse, however, final opinion was kept pending till chemical analysis report was available.

**APPRECIATION :**

27. The aforesaid is the evidence adduced in the case. The offence is serious and if proved, is to meet with a sentence of imprisonment for life, which shall mean till the end of the natural life of the culprit or which shall not be less than a period of 20 years. Serious is the offence, stricter shall be the proof.

28. The offence in question allegedly took place on the night of March 1, 2019. The victim, daughter of the appellant, was at the relevant time, a student of 8<sup>th</sup> Standard. Her school admission form indicate her date of birth was 7/6/2024 (Exh.19). The victim was below 18 years of age when the offence took place. We have to consider her evidence in the backdrop of certain facts namely, the mother of the victim was admittedly not keeping mentally well. For so many years the victim along with her mother would reside along with the victim's grandfather. Just 4 – 5 months before the fateful night, the victim and her mother had started residing with the appellant. It has been admitted by the victim and her mother that due to mental illness of the victim's mother, the appellant had expressed desire to contract second marriage. The appellant's father-in-law was strongly opposed to the said proposal. All was not well between the appellant and his father-in-law. Both of them were even not on talking and visiting terms with each other. The father-in-law had even threatened the appellant to ensure as to how would he contract second marriage. Due to mental illness of the victim's mother, there used to be frequent quarrels between the couple. It was,

however, denied that, a few days before, the father-in-law of the appellant had beaten him up, the appellant thereby suffered fracture. The victim, however, stated that the father (appellant) had suffered fracture of his limb due to fall. She further denied that, the appellant wanted to lodge a report with police against his father-in-law. She further testified that, before she came to the Court to give evidence, she and her mother had been to her grandfather's house a day before and he accompanied them to the Court.

29. It is the case of the victim and her mother that the appellant had threatened them of dire consequences if they go public with the incident. Admittedly, the victim attended the school every day from the next day of the incident till the F.I.R. was lodged on 13 March. Meaning thereby, there is a delay of 13 days in lodging the F.I.R. It is true that it was the father – daughter relationship. The victim was little over 14 years of age. While she was in the witness box to give evidence, she was shy of telling the facts as to the way the appellant had behaved with her. She even wept. She, therefore, narrated the incident in writing. It is Exh.10. She stated the appellant to

have sexual intercourse with her. It is further in her evidence that, the appellant would touch her person inappropriately. While the appellant committed rape of her, her mother woke up. The mother too testified that, she pushed the appellant. He thereupon gave them threats. According to the victim and her mother, one doctor had asked the appellant to bring cum from the victim's private part.

30. The victim did not relate the incident to anyone else until 12 March. True, she testified that she made efforts to have an appointment of the Head Mistress of her school to relate the incident. She further testified that, she did not get the appointment on account of ongoing X and XII Standard examinations. To this piece of evidence, we can only observe that the victim may be correct.

31. P.W.3 Shaikh Farida was the Assistant Teacher. She testified that, the victim met her on March 12. The victim related her and the other two teachers in the staff room that she was waiting for 2 – 3 days to get their appointment. The victim started crying. The victim told them that her father (appellant) would harass her. He attempted to touch her with

bad intention. The appellant would ogle at her. One day her mother was out of house. The appellant tried to embrace her. Meantime, the mother returned. The appellant, therefore, released her. The witness further testified that, the victim was continuously weeping and was unable to make proper pronouncement of words. She and other teachers convinced the victim. They told her that her mother would be called to the school to inform her about the conduct and character of her husband.

32. The evidence of P.W.3 Shaikh Farida indicates that, although the victim had all the opportunity to share with her trauma (penetrative sexual assault), the victim did not tell her of the incident. What the victim narrated her was the appellant's inappropriate behaviour with her (touching her person inappropriately) and ogling at her.

33. It was after two days i.e. on 14, the victim along with her grandfather went to the school.

34. P.W.5 Surekha was the Head Mistress of Manjulabai Kinalkar Girls High School, Bhokar. She testified

that, a day before i.e. on 13, victim met her in the company of Manjramkar Madam. On enquiry with the victim, the victim broke down. The victim related her that the appellant had been harassing her for past 2 – 3 months by touching her inappropriately. When she was asked why it was not reported to the mother, she (victim) told that, the mother told her that they would have to suffer, otherwise the appellant may kill them. The victim then related the Head Mistress the appellant committed sexual intercourse with her. The Head Mistress, therefore, asked her to come with her grandfather. Accordingly, both, the victim and grandfather visited the school. The Head Mistress and other two lady teachers asked the grandfather to take the responsibility of the victim and do the needful. It appears that, thereupon the grandfather of the victim accompanied her to the Police Station to lodge the F.I.R. (Exh.9).

35. As stated above, the F.I.R. was lodged 13 days after the alleged incident. In between period, the victim or her mother did not relate the incident to anyone else. When the victim related P.W.3 Shaikh Farida on 12 March, the victim did

not relate anything about penetrative sexual assault. She only related her of having been harassed by touching her person inappropriately. It is only on 13, the victim related her Head Mistress and then on the following day, the F.I.R. was lodged.

36. In spite of the F.I.R. to have been lodged on 14, it is not known as to why the investigating officer referred the victim for medical examination on March 22, i.e. 21 days after the incident and 9 days after registration of the F.I.R. It was P.W.8 Dr. Mohan who medically screened her. The victim's medical examination report is at Exh.38. The history stated by the victim to P.W.8 Dr. Mohan reads thus :

“History stated by victim . . . her father came to home when no one was in house ... father was in drunken state, talked her irrelevant and abusively. That time she tried to go from house. He forcefully pulled inside house and undressed her and made sexual contact with her and told her if she says about incident to anyone he will kill her so that she lodge complaint.”

37. Close reading of the history given by the victim to the Medical Officer indicates an altogether different version. She did not relate the appellant to have had penetrative sexual assault with her. True, it was stated that the appellant had

undressed her and made sexual contact. When the victim was very much specific while reporting in the F.I.R. and to the Head Mistress that the incident took place on the night of March 1, and mother was at house that time, the history given by the victim is grossly inconsistent with the victim's oral evidence and the averments in the F.I.R.

38. The medical screening report of the victim reads thus :

“Finding consistent with sexual intercourse. However, final opinion is kept pending till chemical analysis report made available.”

39. P.W.8 Dr. Mohan testified according to his provisional opinion. The learned A.P.P., in-charge of the case, did not advert the Medical Officer's attention to C.A's. report to solicit his final opinion. The learned A.P.P. harped upon the aforesaid opinion to submit the same to be consistent with the sexual intercourse. The word, however, appearing in the opinion and the evidence of P.W.8 Dr. Mohan indicate it was provisional opinion and final opinion was to be given on receipt of FSL reports. Meaning thereby, the Medical Officer was not

firm of his opinion. It is a criminal case. On proof of an offence, serious consequences follow.

40. On the question of delay, the learned A.P.P. relied on the judgment of the Apex Court in case of State of H.P. Vs. Shree Kant Shekari (supra).

41. One cannot dispute the aforesaid observations. On facts of the case, we have to find as to whether the conviction and sentence passed against the appellant is sustainable in view of the evidence. In our view, the answer thereto is big "No". To sum up :-

- (1) The victim and her mother were staying with the victim's maternal grandfather for many years.
- (2) Just about six months before the incident, both of them had joined the company of the appellant.
- (3) The victim's mother was not keeping mentally well.
- (4) There, therefore, used to be frequent quarrels between the couple.

- (5) The appellant had expressed desire to contract second marriage.
- (6) His father-in-law strongly opposed to the said proposal.
- (7) All was not well between the appellant and his father-in-law.
- (8) Both of them were not on talking and even visiting terms.
- (9) The appellant would not allow his father-in-law to visit his residence.
- (10) It was suggested that, 15 days before the appellant was assaulted by his father-in-law and thereby he had suffered fracture of his limb. Although the suggestion was denied, the victim stated that the appellant suffered fracture due to fall.
- (11) The alleged penetrative sexual intercourse took place on the night of March 1.
- (12) The victim attended the school every day from March 2 onwards.
- (13) She could meet P.W.3 Shaikh Farida on March 11.

- (14) During the said meeting, the victim did not related P.W.3 \_ (Teacher) about the appellant to have had penetrative sexual intercourse with her.
- (15) It is not known as to why she did not disclose the same when she had full opportunity to relate everything.
- (16) It was only on 13, i.e. 12 days after the incident, the victim related the incident to the Head Mistress.
- (17) The F.I.R. was lodged on 14. The maternal grandfather, who was inimical with the appellant, had been to the school with the victim, and on instructions of the Head Mistress, he accompanied the victim to lodge the F.I.R.
- (18) In spite of the F.I.R. to have been lodged 13 days after the incident, the victim was medically screened on March 22.
- (19) The Medical Officer gave his provisional opinion, reserving final opinion until receipt of FSL reports.
- (20) The same indicates the Medical Officer was not firm of his opinion.

- (21) On receipt of FSL reports, those were not shown to the Medical Officer nor his final opinion was solicited.
- (22) The medical history given by the victim is altogether different than her case in the F.I.R. and examination-in-chief before the Court.

42. In view of all the aforesaid facts, the criminal jurisprudence lead us to conclude that the case propounded by the prosecution 'might' be true and not 'must' be true. There is another aspect of the matter, to which we do not propose to give slightest of importance. Since it is made a part of record of appeal, a reference thereto is warranted. The victim written number of letters to her father. Those letters were produced before us by the appellant through jail. Those letters indicate the victim repented over lodging of the report. Reading between the lines may suggest the victim wanted to tell that her report was not correct. Be that as it may. We are not influenced by those letters.

43. Before parting, we appreciate the assistance rendered by learned advocate Mr. Satej Jadhav, who was appointed to represent the respondent No.2 – victim.

44. For all the aforesaid reasons, we find the Trial Court ought not to have convicted the appellant based on such evidence. The appellant is behind the bars for little over six years.

45. Since we are not at one with the finding recorded by the Trial Court, the appeal succeeds. Hence the order :

**ORDER**

(i) The Criminal Appeal is allowed.

(ii) The order of conviction and sentence, dated 28/11/2019, passed by Additional Sessions Judge, Bhokar, District Nanded in Special Case (POCSO) No.07/2019 is hereby set aside. The appellant is acquitted of the offences punishable under Sections 376(2)(f)(i)(j), 354(A)(1), 323, 504 and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012,

(iii) The appellant be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to him.

(iv) Fees of learned Advocate Ms Ashwini Lomte, who was appointed for the appellant, is quantified at Rs.10,000/- (Rupees ten thousand).

(v) Criminal Application No.2443/2021 stand disposed of.

**(NEERAJ P. DHOTE, J.)**

**(R.G. AVACHAT, J.)**

fmp/-