



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.258 OF 2024

XYZ

..Appellant

VERSUS

1. The State of Maharashtra,
Through Police Station,
Bhokardan, Dist. Jalna
 2. Jaykaran Prakash Panpatil,
Age : 24 Years, Occ. Agriculture,
R/o. Mohlai, Tq. Bhokardan,
Dist. Jalna.
- .. Respondents

....
Mr. Madan S. Kokate, Advocate for the appellant
Mr. A.V. Lavte, A.P.P. for Respondent/State
...

CORAM : **SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

PRONOUNCED ON : OCTOBER 13, 2025.

JUDGMENT (PER SANDIPKUMAR C. MORE, J.) :

1. The victim, has challenged the acquittal of present respondent No.2 i.e. original accused, in Special Case No. 144 of 2022, from the offences punishable under Sections 363, 366-A, 376 of the Indian Penal Code, and under Section 4 r/w 3 & 8 r/w 7 of the Protection of Children From Sexual Offences Act (POCSO) Act, at the hands of learned Additional

Sessions Judge, Jalna (hereinafter referred to as the learned Trial Judge), under judgment and order dated, 07.08.2023 in the aforesaid case.

2. As per the prosecution case, victim's father i.e. P.W. No.1 lodged complaint at Bhokardan Police Station, on 5.4.2022, mentioning that on 4.4.2022, at about 8.00 a.m. the victim went for her examination. Thereafter at about 6.00 p.m., the son of the complainant came to know from his cousin that respondent No.2/accused along with his cousin i.e. Child-in-Conflict with law took away victim on their motorcycle. Accordingly, the complainant on next day lodged complaint against respondent No.2/accused. On the basis of said complaint at Exhibit 26, crime was registered initially under Sections 363, 366-A read with Section 34 of the Indian Penal Code. However, after the victim returned, offences under Sections 376, and under the provisions of POCSO Act as aforesaid were added. The learned Trial Judge, after conducting the trial, acquitted respondent No.2/accused and hence this appeal.

3. The learned counsel for the appellant/victim vehemently argued that despite the victim being of the age of

15 years, 8 months, and 17 days, the learned Trial Judge, acquitted respondent no.2, by ignoring the evidence on record. He pointed out that appellant/victim had, in fact, stated in her evidence as to how respondent No.2 along with one juvenile kidnapped her, and thereafter, respondent No.2 established physical relations with her. Thus, he prayed for reversal of judgment.

4. Heard learned counsel for the appellant/victim as well as learned A.P.P. for respondent No.1/State. Also perused the impugned judgment as well as notes of evidence filed on record.

5. It is extremely important to note that though the prosecution has claimed that the victim was around 15 years of age at the time of incident, but there is no satisfactory evidence brought on record in respect of her minority. On the contrary, if the evidence of PW-11 Ambadas Narayan Dalvi is perused, he has relied on extract of admission register and record in respect of her birth date entry at Sr. No. 75 & 76. According to him, the birth date of the victim, as per the school record, is 17.07.2006, and she was admitted in 1st standard on 15.06.2012. However, it is equally important to

note that in the cross-examination, this witness being the Headmaster of the school of victim, admitted that, he did not know which documents were supplied by the guardian of the victim, to show her birth date as 17.07.2006. This witness is not having any knowledge, as to who supplied the alleged information of the victim in her admission form regarding her birth date. It is to be noted that, the learned Trial Judge has discarded the evidence in respect of birth date of the victim, by relying on the judgment of this Court in the case of ***Ganesh Manhoraraor Palaspagar Vs. The State of Maharashtra, [2020 (1) Mh.L.J. (Cri.) 294]***. It has been observed in the aforesaid judgment that “since the prosecution failed to establish the primary evidence on the basis of which the entry is taken in the admission register, the school record is of no evidentiary value as regards the age determination of the victim.”

6. In the instant case also, there is no other evidence on record to support the entry of birth of the victim in her admission register. Thus, it appears that, the learned Trial Judge has rightly discarded the prosecution case that victim was minor at the time of incident.

7. Once it is held that, victim was not minor, then the evidence given by her is to be scrutinized, as to whether there were ingredients of offence under Sections 363, 366-A and 376 of the Indian Penal Code. On perusal of the evidence of the victim, it is evident that though she stated that respondent No.2/accused along with one juvenile, asked her to sit on their motorcycle and thereafter respondent No.2 took her to various places including Surat, Nashik, and Bhokardan and also established physical relationship with her in one sleeper coach traveling bus, but in the cross-examination, she has clearly admitted that she was having love affair with respondent No.2 and she was frequently talking with the accused on mobile phone, which was also given to her by him. Further, it is also pertinent to note that despite being with respondent No.2 at various places including Nashik and Surat, she did not make any hue and cry had she been already kidnapped, as per the prosecution story. Moreover, during the period of abduction, she was having the aforesaid mobile phone and still she did not try to establish contact with her father. All these facts, indicate that she, on her own, must have gone with respondent No.2/accused and might have consented for the alleged sexual intercourse. It is extremely important to note that though the victim was

examined by Medical Officer, but the prosecution to prove the alleged sexual assault did not care to examine the Medical Officer. As such, there is no convincing evidence on record in respect of the charges levelled against respondent No.2. The scope of appeal against acquittal is too limited and the learned Trial Judge appears to have taken the possible view in the instant case. Thus, we are not inclined to entertain the present appeal being devoid of merit. Accordingly, the appeal stands dismissed.

(MEHROZ K. PATHAN)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

VD_Dhirde