

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

CRIMINAL APPEAL NO.369 OF 2023

Shamrao Manikrao Mokade
Age : 36 Years, Occu : Labour,
R/o. Harshi, Tq. Pusad, Dist. Yewatmal,
At present R/o. Bhanudas Nagar,
Galli No.2, Aurangabad

... Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Station Jawaharnagar,
Aurangabad.

2. XYZ (Complainant)

... Respondents

.....
Mrs. Manjushri V. Narwade, Advocate for the Appellant
Shri. N. D. Batule, APP for the Respondent No.1 – State.
Shri. R. J. Nirmal and Shri. R. R. Kale, Advocate for the Respondent
No.2

.....

CORAM : NEERAJ P DHOTE, J.

Reserved on : 09.10.2025

Pronounced on : 17.10.2025

JUDGMENT :-

. This is an Appeal against the Judgment and order dated 18.11.2021 passed by the Special Judge (POCSO), Aurangabad in Spl. Case (POCSO) No.173/2020 convicting and sentencing the Appellant as follows:

- “1) Accused Shamrao Manikrao Mokade is hereby convicted U/sec.235(2) Cr.PC. for the offences punishable u/sec.363, 376(2)(i)(n), 506 of IPC and u/sec. 4, 6 and 8 of POCSO Act.
- 2) For commission of offence punishable u/sec.363 of IPC, the accused shall suffer rigorous imprisonment for the period of three years and shall pay a fine of Rs.1000/-

(Rupees One Thousand Only), in default to suffer S.I. for 8 days.

- 3) *For commission of offence punishable u/sec.376(2)(i)(n) IPC, the accused shall suffer rigorous imprisonment for the period of ten years and shall pay a fine of Rs.25,000/- (Rupees Twenty Five Thousands Only), in default to suffer S.I. for three months.*
- 4) *For commission of offence punishable u/sec.506 IPC, he shall suffer rigorous imprisonment for the period of three years and shall pay a fine of Rs.1,000/- (Rupees One Thousand Only), in default to suffer S.I. for 8 days.*
- 5) *For the offence punishable u/sec.4(2) of the POCSO Act, he shall suffer rigorous imprisonment for the period of twenty years and shall pay a fine of Rs.25,000/- (Rupees Twenty Five Thousands Only), in default to suffer S.I. for three months.*
- 6) *For the offence punishable u/sec.6 of the POCSO Act, he shall suffer rigorous imprisonment for the period of twenty years and shall pay a fine of Rs.25,000/- (Rupees Twenty Five Thousands Only), in default to suffer S.I. for three months.*
- 7) *For the offence punishable u/sec.8 of the POCSO Act, he shall suffer rigorous imprisonment for the period of three years and shall pay a fine of Rs.1000/- (Rupees One Thousand Only), in default to suffer S.I. for 8 days.*
- 8) *The accused shall undergo all the sentences of imprisonment concurrently.*
- 9) *Period of detention of accused in jail, if any, be given in set off u/sec.428 Cr.P.C. as per rule.*
- 10) *The accused is acquitted u/sec.235(1) Cr.P.C. of the offence punishable u/sec.366-A of IPC.*
- 11) *Muddemal property-clothes and pregnancy kits being worthless be destroyed after expiry of appeal period vide Section 452 Cr.P.C.*
- 12) *The accused shall pay total fine of Rs.78,000/- (Rupees Seventy Eight Thousand only).*
- 13) *Copy of judgment be given to the accused free of cost immediately.*
- 14) *Issue conviction warrant accordingly.”*

2. The Case of the Prosecution, as revealed from the Police Report, is as under :

2.1. The Informant was residing with her family comprising Husband, one (1) Son and two (2) Daughters. In the year 2020, her

Victim-Daughter aged 15 years was studying in 8th Std. On 22.02.2020 the Victim went to school as usual and returned home around 10:30 a.m. Thereafter, she left home around 12:30 p.m. without informing anybody in the home, not to return. The search of the Victim was taken which went in vain. The Appellant, who was the tenant of the Informant, was also not in his room. The Informant suspected that the Appellant kidnapped the Victim and lodged the Report at Exh.16. The Police found the Victim at Yavatmal and she was brought to the Jawahar Nagar Police Station. The Informant was called to the Police Station. The enquiry was made with the Victim. The Statement of the Victim was recorded and Crime came to be registered for the offence of Rape and under the relevant sections of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO') against the Appellant.

2.2. During the course of the investigation, the Victim was referred for medical examination and clothes of the Victim were seized, the Appellant came to be arrested, the clothes of the Appellant came to be seized, the Panchanama of the room of the Appellant was conducted, the blood samples of the Victim and the Appellant were drawn, the document in respect of the age of the Victim came to be collected from the School, seized articles were referred to the Chemical Analysis, C.A. Reports were received and on completion of the Investigation, the Appellant came to be Charge-sheeted.

2.3. On committal, the learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 363, 366-A, 376(2)(i)(n), 506 of the IPC and Sections 3 r/w. 4, 5(1) r/w. 6, 8 r/w. 7 of the POCSO Act. The Appellant pleaded not guilty and claimed to be tried. To establish the Charge, the Prosecution examined in all eight (8) Witnesses as follows: the Informant came to be examined as PW1, Victim came to be examined as PW2, In-charge Headmistress of the Municipal Corporation primary School, Vishnunagar, Aurangabad, came to be examined as PW3, the Panch for Spot and seizure of clothes of the Victim came to be examined as PW4, the Panch for Spot of Incident came to be examined as PW5, the Medical Officer who examined the Appellant came to be examined as PW6, the Medical Officer who examined the Victim came to be examined as PW7, and the Investigating Officer came to be examined as PW8. The relevant documents are brought on record in the evidence of the Witnesses.

2.4. After the Prosecution submitted the evidence closure pursis, the Statement of the Appellant under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.PC.') came to be recorded. The Appellant claimed false implication and stated that the Victim on her own came to his village. Thereafter, the learned Trial Court passed the impugned Judgment and order Convicting and Sentencing the Appellant, as above.

3. Heard the learned Advocate for the Appellant, the learned APP for the State and the learned Advocate for the Victim. Scrutinized the evidence available on record.

4. It is submitted by the learned Advocate for the Appellant that, the Prosecution failed to prove the date of birth and age of the Victim by concrete evidence and therefore, it is not proved that the Victim was a child as defined under Section 2(d) of the POCSO and therefore the benefit must go to the Appellant.

4.1. It is submitted by the learned APP and the learned Advocate for the Victim that, the Prosecution examined the In-charge Headmistress of the school where the Victim was admitted and the documents showing the date of birth of the Victim in the school record are brought on record. Apart from the same, the Prosecution examined the Mother of Victim and therefore, the date of Birth and the age of the Victim are proved. In support of his contention, the learned APP cited the Judgment in *Jarnail Singh vs. State of Haryana, 2013 Cri.L.J. 3976*, wherein it is observed that, “*Even though Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is strictly applicable only to determine the age of a child in conflict with law, the aforesaid statutory provision should be the basis for determining age, even for a*

child who is a victim of crime.”

5. The evidence of PW3 show that, since March-2019 she was the In-charge Headmistress of the Municipal Corporation Primary School, Vishnunagar. She supplied the extract (Exh.26) of the Pravesh Nirgam register to the Investigating Officer wherein date of birth of the Victim was entered. The Victim was admitted to the 1st Std in the said school on 25.07.2011. While taking admission, they take the school admission form filled by the parents and on the basis of information given in that Application, the entry is taken in the Pravesh Nirgam register. The date of birth of the Victim was recorded as 5th March, 2004. Her Cross-examination show that, the place of birth was not mentioned in Column No.11 of Exh.26 and the papers from the Hospital wherein the student was born, were not on record and she was not holding the Charge of the Headmistress at the time of the admitting the said student. Suggestion is given that, the said date of birth was approximate and incorrect.

6. The other evidence in respect of the age of the Victim is that, of the Informant who is none other, but the Mother of the Victim. Though in her evidence she deposed that in the year 2020 the Victim was 15 years old, she nowhere deposed of the date of birth of the Victim. It has come in her Cross-examination that, she do not remember the year of birth of the Victim. Suggestions are given that in the year – 2020 the

Victim was above 18 years of age and there were different dates of birth of the Victim and therefore, she did not know about the same and further that the approximate date of birth of the Victim was given.

7. The Cross-examination of the above referred two (2) Witnesses show that, the defence has seriously challenged the date of birth and the age of the Victim. As seen from the evidence of the PW3, the date of birth of the Victim was brought in evidence which was recorded in the school record. What the evidence of PW3 go to show is that, the date of birth / information of the pupil in the school record was entered on the basis of the information given in the form / application by the parents. It is clear from the evidence of PW3 that, the date of birth of the Victim was entered in the school record only on the basis of the information given by the parents. One of the parents of the Victim, as seen above, is PW1 the Mother of the Victim. The date of birth, of the Victim has nowhere come in her evidence. On the contrary, her evidence show that, she did not remember the year of birth of the Victim. When the PW1 herself is not sure or do not remember the year of birth of the Victim and nowhere it has come in the evidence of PW1 - Mother of the Victim that, she had given necessary information regarding the date of birth of the Victim in the School, the authorship and correctness of the date of birth recorded in the school record remains doubtful. With this evidence available on record, it cannot be said that, the Prosecution has

established the date of birth and consequently, the age of the Victim.

8. It is submitted by the learned Advocate for the Appellant that, the evidence of the Victim do not prove the Charge against the Appellant. The Victim's testimony show that, she eloped with the Appellant. The evidence of the Victim show that, she was not the witness of sterling quality and her testimony finds no corroboration from the medical evidence. Under such circumstances, the benefit should go to the Appellant. He further submitted that, the evidence on record go to show that the Victim was a girl of matured understanding and she was knowing what was appropriate and what was not. In support of his contention, he relied on the Judgments in *(1) Ashik Ramjali Ansari vs. State of Maharashtra and Another, 2023 DGLS (Bom.) 2732*, *(2) Raju @ Kiran Dagadu Gavade vs. State of Maharashtra and Others, 2022 DGLS (Bom.) 4166*, *(3) Kanhoba s/o. Krushna Dabhade vs. State of Maharashtra, 2021 DGLS (Bom.) 2235*.

9. It is submitted by the learned APP that, the Victim's testimony has proved the Charge against the Appellant. Her testimony remained unshaken in the Cross-examination and was consistent with her previous statements. The Victim was the witness of sterling quality. Considering the nature of evidence of the Victim, no corroboration was required and the testimony be accepted. In support of his submissions, he cited the Judgments in *Ganesan vs. State represented by its Inspector of Police,*

AIR 2020 SC 5019, Sunil Fattesing Sable vs. The State of Maharashtra in Criminal Appeal No.718 of 2016 of this Bench dated 3rd October, 2023.

10. The learned Advocate for the Victim adopted the submissions made by the learned APP. He relied on the Judgment of *Deepak IN JC vs. State Govt. of NCT Delhi, dated 03.07.2025*.

11. The Victim – PW2 in her testimony deposed that, in the year 2020 she was residing with her family and studying in 8th Std and she knew the Appellant as he was the tenant in their house from last 5 years. The Appellant used to call her for study in his room and used to have sexual intercourse with her, though she was resisting. The Appellant pressed her mouth and threatened with dire consequences. The Appellant committed sexual intercourse with her from last two months. The Appellant told her that he will take her to his village. When she refused, the Appellant threatened her to kill. The Appellant forcibly made her sit in the rickshaw, took her to the CIDCO bus stand and from there took her to the District Yavatmal. The Appellant took her to his house and after three days, the Police from Jawaharnagar Police Station came there and took both of them. She deposed that, thereafter she was referred to the Civil Hospital for medical examination. The doctor enquired with her. Her statement was recorded by the Police and in the Court. She identified the Appellant.

11.1. The Cross-examination of the Victim show that, the Appellant had no weapon, such as Knife, Revolver etc with him when he took her in the rickshaw from the populated area. There were many residential houses and shops and it required 10 (ten) minutes to reach Mitranagar from Trimurti Square by walk. The Mitranagar Square was the thickly populated area. She did not make hue and cry in the Mitranagar Square and Trimurti Square. Besides Appellant, there were other tenants in their house. The Appellant was not teacher by profession. She did not tell about the sexual assault to her Mother on 22.02.2020. Thereafter, the Victim denied all the suggestions put to her that she eloped with the Appellant out of the love relations, she gave false statement to the Police etc.

12. There is medical evidence in the form of testimony of PW7 who examined Victim on 25.02.2020 when she was brought by the Jawaharnagar Police for medical examination. Her evidence show that, she took the consent of the Victim for medical examination and recorded the history narrated by the Victim. Her evidence show that, the history given by the Victim was that she was knowing the Appellant for last two years as he was residing at their house as the tenant and they started liking each other and they had peno-vaginal intercourse without force 6 to 7 times and last incident was of 01.01.2020 at the house of the Appellant. It has further come in her evidence that, the Victim stated that Victim's

family members were aware about the relations and they were not happy and had warned them and on 22.02.2020 the Victim ran away with the Appellant to his native, however was caught by the Police. The further evidence of this Witness show that, there were no signs of physical injuries or genital injuries, though hymen was found to be torn. She deposed of collecting the samples of scalp hair, nail clippings, blood for grouping and DNA analysis, vulval swab, vaginal swab, vaginal smear. Urine Pregnancy Test was negative. The medical examination papers of the Victim are brought on record in the evidence of this witness. On confronting the CA Reports, she deposed that the samples of blood, body fluids and tissues were not showing any foreign DNA or any semen sample and so, peno-vaginal penetrative sexual violence was ruled out and after 1 ½ to 2 months of sexual intercourse, there was possibility of negative report in respect of the samples which they had collected and also it rules out forceful penetrative sexual assault symptoms. Cross-examination show that, the history was recorded as narrated by the Victim herself and the Victim stated that the sexual relations were voluntary.

13. Evaluation of the above discussed evidence of the Victim and the Medical Officer, it is clear that, the Victim's testimony was not corroborated by the medical evidence, including her previous Statement in the form of medical history. Victim's testimony and the history

narrated by her to the Medical Officer are contrary to each other. This makes testimony of the Victim unbelievable. The Victim cannot be called the Victim of sterling quality. In view of the medical evidence on record, the defence put forth by the Appellant in the Cross-examination appears probable and acceptable. It is strange that, the Victim, who appears to be of mature understanding as can be seen from her testimony, remained silent though she was taken by the Appellant to his native place. She had all the opportunity to raise hue and cry and escape from the custody of the Appellant. However, she did nothing. This clearly shows that, the Victim eloped with the Appellant. Therefore, the testimony of the Victim in respect of the Charge is discarded.

14. The other evidence is that of Panch Witnesses in respect of seizure of the clothes, the Panchanama for the Spot, the Investigating Officer and the C.A. Reports. Seizure of the two pregnancy kits from the room shown by PW1 cannot be considered as incriminating circumstance. C.A. Reports neither show blood nor semen on the Articles. This evidence takes the case of the Prosecution no further, as vital evidence do not establish the Charge. Under such circumstances, there is no question of raising presumption under Section 29 of the POCSO. There cannot be two views in respect of the ratio laid down in the above referred Judgments cited by the parties. The said Judgments were delivered on the factual aspects available on record in those cases.

In the case at hand, the Prosecution failed to establish that the Victim was a child on the date of offence. The testimony of the Victim is not trustworthy, is unreliable and not corroborated by the medical evidence. Therefore, the Conviction and Sentence recorded by the learned Trial Court warrants interference and the Appeal succeeds. Hence, the following order.

ORDER

- (i) The Appeal is allowed.
- (ii) The Conviction and Sentence imposed on the Appellant by the impugned Judgment and Order is quashed and set aside.
- (iii) The Appellant is acquitted for the offence punishable under Sections 363, 376(2)(i)(n), 506 of the IPC and Sections 4, 6 and 8 of POCSO Act.
- (iv) The Appellant be set at liberty forthwith, if not required in any other offence.
- (v) Fine paid, if any, be refunded to the Appellant.
- (vi) Muddemal Articles be dealt as per the directions of the learned Trial Court.

(NEERAJ P. DHOTE, J.)

GGP