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

CRIMINAL APPEAL NO.390 OF 2023

Shivaji Bhaurao Suryawanshi
Age : 37 years, Occu : Labour,
R/o. Brahmani, Tq. Rahuri,
Dist. Ahmednagar

... Appellant
(Original Accused)

Versus

1. The State of Maharashtra,
Through Rahuri Police Station,
Dist. Ahmednagar

2. XYZ

... Respondents

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Shri. C. C. Deshpande h/f. Shri. S. S. Rathi, Advocate for the Appellant
Ms. M. L. Sangit, APP for the Respondent – State.

Shri. S. A. Ambilwade, Advocate for Respondent No.2 (Appointed
through Legal Aid)

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CORAM : NEERAJ P. DHOTE, J.

RESERVED ON : 19.11.2025

PRONOUNCED ON : 03.12.2025

JUDGMENT :

1. This Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') is directed against the Judgment and Order dated 08.03.2023 passed by the learned Extra Jt. District Judge & Additional Sessions Judge, Ahmednagar in Special Case No.81 of 2022, convicting and sentencing the Appellant as follows:

- “1. Accused Shivaji Bhaurao Suryawanshi is acquitted under the provisions of Section 235(1) of the Code of Criminal Procedure, 1973 for the offence punishable under Sections 323 of Indian Penal Code.*
- 2. Accused Shivaji Bhaurao Suryawanshi is convicted under the provisions of Section 235(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Sections 376(3), 376(2)(n), 363, 366(A), 506 of Indian Penal Code and under Sections 4, 6, 8 and 12 of POCSO Act.*
- 3. Accused Shivaji Bhaurao Suryawanshi is convicted and sentenced to suffer R.I. for twenty years and fine of Rs.2000/- (Rs. Two thousand only) i/d. to suffer S.I. for two months u/s.376(3) of I.P.C.*
- 4. He is further convicted and sentenced to suffer R.I. for two years and fine of Rs.1000/- (Rs. One thousand only) i/d. to suffer S.I. for one month u/s.366(A) of I.P.C.*
- 5. He is further convicted sentenced to suffer R.I. for six months fine of Rs.500/- (Rs. Five hundred only) i/d. to suffer S.I. for 07 days u/s.506 of I.P.C.*
- 6. All the substantive sentences shall run concurrently.*
- 7. Accused is in jail. He is taken into custody. He is entitled for set-off u/s.428 of Cr.P.C. for the period already undergone by him.*
- 8. Muddemal property i.e. seized motor cycle be given to its registered owner and other muddemal being worthless, be disposed of after appeal period is over.*
- 9. Copy of judgment be given to the accused free of cost.*
- 10. The judgment is dictated and pronounced in open court.”*

2. The Victim - child was residing with her family. The Appellant was the neighbourer. They knew each other. The Appellant in the night of 17.11.2021 took the Victim with him on the motorcycle at Wadgaon, Tal. Karmala, Dist. Solapur. They stayed at one place at the said village where the Appellant raped the Victim from time to time till 11.12.2021. The Appellant came to know that the Report was lodged by the Victim's Uncle and so he dropped the Victim to the village. The Victim narrated

the incident to her family members and the matter was reported to the Rahuri Police Station. The Victim's Statement was recorded and Crime bearing No.944/2021 came to be registered against the Appellant for the offence punishable under Sections 376 (2)(n), 363, 366, 323, 506 of the Indian Penal Code (for short, 'IPC') and for the offence punishable under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO'). The Victim was referred for medical examination. The Victim's clothes came to be seized. The Appellant came to be arrested and was sent for medical examination. Clothes of the Appellant came to be seized. The Panchanama of the spot of the incident came to be drawn. Statement of the Witnesses came to be recorded. Document in respect of the age and medical examination of the Victim came to be collected. On completion of the investigation, the Appellant came to be Charge-sheeted.

2.1. On committal, the learned Trial Court framed the Charge against the Appellant below Exh.4 for the offence punishable under Sections 363, 366A, 376(2)(n), 323, 506 of the IPC and for the offence punishable under Sections 4, 6, 8 and 12 of the POCSO and for the offence punishable under Section 376(3) of the IPC below Exh.72. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined the Victim as PW1, the Victim's Uncle as PW2, the Panch Witness for the spot as PW3, the Panch Witness for

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seizure of Motorcycle and the clothes of the Appellant as PW4, the Medical Officer who examined the Victim as PW5, the Headmaster of the Primary School where the Victim studied as PW6, the Investigating Officer as PW7, the another Investigating Officer as PW8, and the Gramsevak of the Grampanchayat as PW9. Certain documents are brought on record in the evidence of the aforesaid witnesses. After the Prosecution filed the evidence closed *pursis*, the Statement of the Appellant under Section 313 (1)(b) of the Cr.PC. came to be recorded. The Appellant stated that, he was falsely implicated as he refused to allow the family members of the Victim to erect fencing. The learned Trial Court on appreciation of the evidence on record, passed the impugned Judgment and order.

3. Heard the learned Advocate for the Appellant, the learned APP for the Prosecution and the learned Advocate for the Respondent No.2 – Victim. Scrutinized the evidence available on record.

4. It is submitted by the learned Advocate for the Appellant that, the Victim was of age of understanding and she knew as to what was good and bad for her. The Victim accompanied the Appellant out of the love. The Victim's Uncle deposed that, the Victim voluntarily went. The Victim was accompanied with her family members in the Police Station and the possibility of her tutoring cannot be ruled out. The Victim had refused her medical examination at the first instance. No injuries were

found on the Victim in the medical examination. She gave the history to the Medical Officer that, she went with the known person out of love affair with him. The Spot Panchanama was not disputed. The persons residing near the house of the Victim were not examined. The evidence on record do not prove the Charge against the Appellant and the Appeal be allowed. In support of his contention, he cited the Judgments in *Alamelu & Anr vs. State represented by Inspector of Police, 2011 Legal Eagle (SC) 61*, and *Satesing @ Aaba Manga Thakare (Bhil) vs. The State of Maharashtra and Another in Criminal Appeal No.914 of 2018* decided by this Court on 19.04.2022.

5. It is submitted by the learned APP that, the age of the Victim was proved and she was minor on the date of the Crime. There was huge difference in the age of the Victim and the Appellant. As there was considerable delay in the medical examination, no injuries were found on the Victim. The Victim was not of consenting age. She was threatened by the Appellant. The learned Trial Court has rightly appreciated the evidence available on record. The Conviction and Sentence needs no interference. In support of her contention, she cited the Judgment in *Jamnala vs. State of Rajasthan and another dated 06.08.2025 in Special Leave Petition (CRL.) No.69 of 2025*.

6. It is submitted by the learned Advocate for the Victim that, as the Victim was the child, her consent was immaterial. The Appellant was

married person and his son was studying with the Victim. The learned Trial Court rightly convicted and sentenced the Appellant and the Appeal be dismissed.

7. To prove the date of birth of the Victim, the Prosecution relied on the evidence of the PW6 – Headmaster of the School where the Victim had taken the admission in the first standard and PW9 who was the Gramsevak of the Grampanchayat where date of the birth of the Victim was recorded.

7.1. The evidence of PW6 show that, since 07.03.2019 he was attached to the Primary School. His evidence show that, he brought the admission register of the school. The Victim was admitted in the said school on 25.06.2012 in the first standard. At the time of her admission, her guardian submitted the hospital certificate regarding the age. The entry of the Victim was at Serial No.3474 in the Book No.13 wherein name of her parents were mentioned as Yashoda and Santosh and place of birth as Wadner, Tal. Kannad, Dist. Aurangabad. The date of birth of the Victim was recorded as 04.01.2007. The certified copy of the admission form and certified copy of the relevant page from the school record are brought on record in the evidence of this Witness at Exh.37 and 38, respectively. Merely because he was not the Headmaster of the School when the Victim took admission, will not be sufficient to discard his evidence which is in the nature of school record maintained in

regular course of the functioning of the school. Evidence of this Witness clearly show that, the details of the Victim including date of birth were recorded on the basis of the documents supplied by her guardian. Nothing has come in the cross-examination to create any dent in the testimony of this witness.

7.2. The evidence of PW9 show that, since 2021 he was working as the Gramsevak with the Wadner Grampanchayat. His work comprised of maintaining record of birth and death register and to record the entries. His evidence show that, he brought original record with him regarding birth entry of the Victim as per summons. The date of birth of the Victim was recorded in the register at Sr. No.2. The name of the parents were mentioned as Santosh and Yashoda and birth place was mentioned as Primary Health Centre, Wadner. Date of birth of the Victim was recorded as 04.01.2007. The certified copy of the Birth Report maintained by the Grampanchayat was brought on record in the evidence of this witness at Exh.67. Merely because he was not working at relevant time when the entry was recorded, will not be sufficient to discard his evidence which was based on the record maintained by the Grampanchayat in day-to-day functioning. The cross-examination could not shake his evidence given in the examination-in-chief.

7.3. There is no reason to discard the evidence of the above referred two witnesses in respect of the record maintained by the school where

the Victim was admitted in the first standard and the Grampanchayat record wherein the entry of birth of the Victim was recorded. The date of birth mentioned in both records is consistent. With this evidence on record, the Prosecution established that, the date of birth of the Victim was 04.01.2007.

8. The testimony of the Victim show that, the Appellant was residing in front of her house with his family. She deposed that, once in the afternoon when she was collecting the cotton in the field, the Appellant came to her and expressed his liking for her and she returned to her home without talking to him. Once in the afternoon when there was no water in the Grampanchayat tap, she went to the Grampanchayat for getting the water, at that time the Appellant asked her the answer for his liking to her and she replied in the affirmative. Thereafter, they both started speaking to each other. Once the Appellant kissed her on the lips forcibly and she ashamed. The Appellant presented one mobile phone to the Victim. They used to talk with each other on the mobile phone. The Appellant's Wife once saw the Appellant and the Victim talking and so she called the Victim to her house. The Appellant tried to commit suicide by consuming poison. The evidence of Victim further show that, in August-2021 when she had been to the field, the Appellant came to her and started talking with her. She showed disinclination to talk to him. The Appellant threatened to consume poison and name her parents for

the consumption of the poison, for that they would go in jail. Therefore, unwillingly she started to talk to the Appellant. On 15.11.2021 she received phone call from the Appellant who called her to meet around 11:00 p.m. behind the house. When they met, the Appellant told the Victim that they would run and perform the marriage. The Victim refused. The Appellant threatened to kill her parents and threatened to commit suicide by consuming poison, therefore the Victim replied in the affirmative. On 16.11.2021 she received phone call of the Appellant in the night at 2:00 a.m. and the Appellant called her near *Anganwadi* and so she went there. The Appellant came with the black colour Motorcycle and asked her to sit on the same and took her to Karmala. They reached Karmala at 11:00 a.m. They went in one field where the Appellant managed one hut to stay. They both stayed in the hut for 20 to 25 days, during which period the Appellant forcibly committed sexual intercourse with the Victim every day.

9. The Victim further deposed that, on 12.12.2021 the Appellant learnt that, the case was filed and the Police was searching them, therefore, he brought the Victim at Brahmani and asked her not to tell anything to the Police. The Appellant left the Victim near the forest and he went on the motorcycle. The Victim told the incident to her family members. The Police recorded her Statement. She was medically examined at Rahuri. The Police seized her clothes, which were Articles 1 to 4. She identified clothes at Article 4 to 6 as that of the Appellant.

She identified the Appellant before the Court. Her further evidence show that, the Appellant was having three children and the elder son of the Appellant was her classmate.

10. Cross-examination of the Victim show that, her evidence that the Appellant was residing in front of her house and they knew each other is fortified. The tenor of the cross-examination show that, it is not disputed that the Victim accompanied the Appellant and was in his company for some days. From the cross-examination, it becomes crystal clear that, it is the defence of the Appellant that, all the acts were by consent of the Victim, including sexual intercourse. The Victim denied that the sexual intercourse was by her consent. From the cross-examination, it is seen that, the Appellant presented mobile phone to the Victim and they used to talk. It has come in the cross-examination that, the Appellant did not allow her to speak with the neighbours, therefore she could not tell anybody. It has also come in the cross-examination that, the Appellant threw the card of her mobile and therefore, she could not make a phone call to anybody and the Appellant used to take her with him if he wanted to go anywhere. It has also come in the cross-examination that, when the Victim's parents came in search of the Victim, the Appellant took her to another village on the motorcycle and the Appellant kept her at one place in the village. She further denied that, she was staying with the Appellant as per her wish. Though the cross-examination indicate that, the Victim developed some

intimacy towards the Appellant, the overall evidence of the Victim show that, the Appellant initiated the relationship and he tried to commit suicide as the Victim was not responding to his advances or proposal. The Victim's evidence show that, the Appellant threatened the Victim to implicate her parents by again consuming poison. This clearly show that, the Victim responded to the acts of the Appellant under pressure or duress and surrendered herself to the Appellant's wishes. The Victim's evidence show that, the Appellant, by making phone call to her after midnight made her to accompany him to different places, where they stayed together and committed sexual intercourse with her. The evaluation of the evidence of the Victim show that, unwillingly she surrendered herself to the Appellant. Sexual intercourse with the Victim by the Appellant is not seriously disputed as is clear from the Victim's evidence. It is needless to state that, the consent or wish or Will due to duress or threat or compulsion, is not a free consent. True it is, that twice, in the cross-examination of the Victim it has come that the Appellant did not give threat to her, however, it was in the context of his expressing liking for her and presenting the mobile phone.

11. Reasonably lengthy cross-examination of the Victim could not demolish her evidence given in the examination-in-chief. The incident of taking the Victim by the Appellant in the midnight is of 16.11.2021 and they were together till 11.12.2021, during which period, the

Appellant established sexual relations with the Victim. From the proved date of birth of the Victim, and the above dates, during which, the incident took place, clearly establishes that, at the time of incident the Victim was below 15 years of age and thus was a Child as defined under Section 2(d) of the POCSO. The testimony of the Victim show that, it was consistent with her previous Statement recorded by the Police. The suggestion of false implication is denied by the Victim. Except denial, there is nothing in the Statement of the Appellant recorded under Section 313 (1)(b) of the Cr.PC. Considering the Victim's age, she was not legally competent to consent for the acts deposed by her in her evidence committed by the Appellant. It is needless to state that, under the law, the consent of minor, will not be the consent. As discussed above, the Appellant's son namely Suraj, was the classmate of the Victim. This show that, the Appellant had the knowledge that the Victim was the minor / Child. The overall testimony of the Victim inspires confidence and there is nothing to discard her testimony. Her testimony clearly established that, under duress or due to the pressure or threat by the Appellant to commit suicide and implicate her parents she had no option but to listen to the Appellant and in that course, she accompanied the Appellant and had sexual intercourse with him.

12. There is medical evidence on record in the nature of testimony of PW5, who was the Medical Officer at Rauri Rural Hospital. Her evidence show that, on 15.12.2021 she was on duty as Gynecologist and the

woman Police Constable brought the Victim for clinical examination around 02:30 p.m. After taking consent of the Victim and that of her guardian, she noted the identification mark of the Victim, took down history narrated by the Victim and medically examined her. Her evidence show that, she found no injury on external or internal body or genitals of the Victim. On vaginal examination, she found that the hymen was not intact. She deposed that, before the examination the Victim had sexual intercourse. She prepared the Medical Examination Reports. Her further evidence show that, on 10.03.2022 the Appellant was brought by the Police for medical examination and after noting his identification marks, she medically examined the Appellant and found him to be capable of having sexual intercourse and he was found to be potent. It is true that, the evidence of the Medical Officer indicate that, in her history Victim stated of love affair with the known person and having sexual intercourse, that will not go to create dent in the testimony of the Victim as discussed above. The medical evidence corroborate the testimony of the Victim that there was sexual intercourse before her medical examination. In the light of the Victim's testimony as discussed above, absence of injuries on the Victim and the Appellant becomes insignificant.

13. The other evidence is that of the Victim's Uncle, who is examined as PW2. His evidence is in respect of absence of the Victim in the house

from the night of 16.11.2021, lodging the Missing Report with the concerned Police Station, finding the Victim after 20 to 22 days. Though in the cross-examination of this witness, it has come that, the Victim initially went voluntarily, he was not the eye witness to any of the incident, therefore, the said admission will not affect the testimony of the Victim.

14. The other evidence is that of the Panch Witnesses – PW3 and PW4. Evidence of PW3 speak of drawing the Spot Panchanama below Exh.27 of the place shown by the Victim. The evidence of PW4 is in respect of seizure of the Motorcycle and the clothes of the Appellant. As C.A. Reports show nothing incriminating, the seizure of the clothes pursuant to Section 27 of the Indian Evidence Act will not be relevant. The other evidence is of two Investigating Officers, wherein they have deposed in respect of the investigation conducted by them.

15. The testimony of the Victim clearly attracts the presumption of culpable mental state as provided under Section 30 of the POCSO on the part of the Appellant. At the cost of repetition, it is observed that, the Appellant was already married having children and his son was the classmate of the Victim. There is nothing to show that the Presumption was rebutted.

16. The above referred Judgments cited by the learned Advocate for

the Appellant are of no assistance for the reason that, the factual aspects in those matters were different. In *Alamelu (supra)*, the Transfer Certificate of the Victim was simply placed on record and the Headmaster of the school was not examined and therefore, the entry in the Transfer Certificate was not relied. It was held that, the Prosecution failed to prove that the Victim therein was a minor at the relevant date. Similarly, in *Satesing @ Aaba Manga Thakare (Bhil) (supra)*, the age of the Victim therein was not proved and the Appellant was found to be aged 19 years and the case was found to be of emotional involvement.

16.1. The Judgment in *Jamnallal (supra)* cited by the learned APP is in respect of Suspension of Sentence and therefore, need not be discussed.

17. The conviction recorded by the learned Trial Court is for the offences punishable under Section 376(3) which provides for the punishment for committing Rape on woman under 16 years of age; Section 376(2)(n) which is for commission of Rape repeatedly on the same woman; Section 363 which is the punishment for kidnapping; Section 366A which is in respect of procurement of minor girl; 506 which is punishment for criminal intimidation of the I.P.C. and Section 4 which is the punishment for penetrative sexual assault; Section 6 which is the punishment for aggravated penetrative sexual assault; Section 8 which is the punishment for sexual assault; and Section 12 which is the

punishment for sexual harassment of the POCSO. The above discussed evidence of the Victim coupled with the medical evidence on record proves the essential ingredients for the above referred Sections of the I.P.C. and POCSO, for which the Appellant is convicted. The Sentence awarded by the learned Trial Court to the Appellant is in consonance with the law. Consequently, no interference is called for in the impugned Judgment and order and the Appeal fails. Hence, the following order is passed.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Record and Proceedings be sent back to the learned Trial Court.
- (iii) 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)
JUDGE

GGP