



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

CRIMINAL APPEAL NO. 408 OF 2023

Balu S/o Kisan Pandit,
Age : about 44 Years, Occu: Labour,
R/o Navnathnagar, Garkheda Parisar,
Aurangabad, Dist. Aurangabad.

...Appellant

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Mukundwadi,
Tq. & Dist. Aurangabad.

2. X. Y. Z.

...Respondents

.....

Mr. Ravindra B. Narvade Patil – Advocate [appointed through Legal Aid]
for the Appellant

Mr. M. K. Goyanka – APP for Respondent No. 1 / State

Mr. Mahendra G. Kochar – Advocate [appointed through Legal Aid] for
Respondent No. 2

.....

CORAM : NEERAJ P DHOTE, J.

RESERVED ON : 08.10.2025

PRONOUNCED ON : 16.10.2025

JUDGMENT : -

1. This is an Appeal against Conviction under Section 374(2) of the Code of Criminal Procedure [hereinafter referred to as ‘Cr.PC.’] against the Judgment and Order dated 22.12.2021 by the learned Special Judge (POCSO), Aurangabad, in Spl. Case [POCSO] No.82/2015, convicting and sentencing the Appellant as follows: -

“ORDER

1) *Accused Balu Kisan Pandit is hereby convicted for the offence punishable u/sec. 376(2)(f), 506 of IPC, u/sec.4 & 6 of the*

POCSO Act and u/sec.11 of Prohibition of Child Marriage Act, vide Section 235(2) Cr.PC.

- 2) *For commission of offence punishable u/sec.376(2)(f) of IPC, the accused shall suffer rigorous imprisonment of Ten years and shall pay a fine of Rs.5000/ (Rupees Five Thousand Only), in default to suffer S.I. for one month.*
- 3) *For offence punishable u/sec.506 of IPC, he shall suffer rigorous imprisonment of three months and shall pay a fine of Rs.1000/ (Rupees One Thousand Only), in default to suffer S.I. for one week.*
- 4) *For offence punishable u/sec.4 of POCSO Act, he shall suffer rigorous imprisonment of Ten years and shall pay a fine of Rs.5000/ (Rupees Five Thousands Only), in default to suffer S.I. for one month.*
- 5) *For offence punishable u/sec.6 of POCSO Act, he shall suffer rigorous imprisonment of twenty years and shall pay a fine of Rs.5000/ (Rupees Five Thousands Only), in default to suffer S.I. for one month.*
- 6) *For offence punishable u/sec.11 of the Prohibition of Child Marriage Act, 2006, he shall suffer rigorous imprisonment of three months and shall pay a fine of Rs.1000/ (Rupees One Thousand Only), in default to suffer S.I. for one week.*

2. The Prosecution's case, as revealed from the Report, is as under : -

- [a] The Prosecutrix / Victim was residing with her mother, brother, sister and the Appellant, who is her step father, at Navnathnagar, Garkheda, Aurangabad. She was taking education in the School. From the year 2014, the Appellant started keeping an evil eye on her. The Victim's mother was in catering work and during marriage season, used to be out of house for two to three days. During that time, the Appellant used to perform forceful sexual intercourse with

the Victim. When the Victim resisted, he threatened her to kill. The Appellant got the Victim married to his nephew in May-2015. After marriage, when the Victim came to her matrimonial home, the Appellant again raped her and threatened her with dire consequences. Eventually, the Victim informed her mother and report was lodged with the concerned Police Station. The Victim was referred for medical examination, her clothes were seized, the statement of witnesses were recorded and the spot *panchanama* was conducted. The Appellant came to be arrested. The clothes of the Victim and that of the Appellant came to be seized. The seized articles were sent for Chemical Analysis. The document in respect of the age of the Victim was collected. On completion of investigation, the Appellant came to be Charge-sheeted.

- [b] On committal, the learned Trial Court framed the Charge against the Appellant for offences punishable under Sections 376 r/w 376(f), 504, 506 of the Indian Penal Code and 4 r/w 3, 6 and 11 of the Protection of Children from Sexual Offences Act, below Exh. 5, to which the Appellant pleaded not guilty and claimed to be tried. To establish the Charge, the Prosecution examined in all five (5) witnesses. The Victim is examined as PW1 below Exh.36. Kaduba

Bhikaji Bhujinge, the Panch for Spot and seizure of Victim's clothes, is examined as PW2 below Exh. 44. Dr. Rupali Atmaram Gaikwad, Medical Officer, is examined as PW3 below Exh. 51. Namdeo Shahadrao Chavan, the Headmaster of the Zilla Parishad Primary School at Wasadi, Tq. Kannad, is examined as PW4 below Exh. 67. Eknath Bhagaji Ware, the Investigating Officer, is examined as PW5 below Exh. 75. The Spot Panchanama [Exh.45], the medical examination papers of the Victim [Exh. 53], the CA reports [Exhs. 55, 56 and 57], the Cloth Seizure Panchanama of the Appellant [Exh. 62], the medical examination report of the Appellant [Exh. 63], the documents in respect of the date of birth of the Victim [Exh. 68 to 71], and other relevant documents are brought on record by the Prosecution. After the Prosecution filed Evidence Closure Purisi, the statement of the Appellant came to be recorded under Section 313(1)(b) of the Cr.P.C. After appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order convicting the Appellant as above.

3. It is submitted by the learned Advocate for the Appellant that, two days before the Judgment, the additional charge was framed.

The Prosecution examined the interested witnesses. As the Appellant got the Victim married to his nephew, false case is registered against him. The school record do not show that the date of birth was based on the birth certificate. The evidence on record do not establish the Charge. In the alternative, he submitted that the sentence imposed by the learned Trial Court is exorbitant and the same be brought down to the minimum. In support of his submissions, he cited the judgment in *Satauram Mandavi v. State of Chhattisgarh*, 2025 SCC OnLine SC 1516. He submitted that the Appeal be allowed.

4. It is submitted by the learned APP that, the evidence on record proved the Charge. The Appellant changed his defence from time to time. The Victim stuck to her version. There is corroboration by medical evidence. The age of the Victim has been proved. There is no denial by the Appellant in the cross-examination. The learned Trial Court rightly convicted and sentenced the Appellant, and no leniency be shown to the Appellant, and the Appeal be dismissed.

5. The learned Advocate for the Victim submitted that the Victim has given explanation as to why she kept mum for some period. The Charge is proved by leading the evidence. The CA reports corroborate the testimony of the Victim. The Prosecution's case remained intact in the cross-examination. The Appellant is the step

father of the Victim and the learned Trial Court has rightly convicted and sentenced the Appellant and the Appeal be dismissed.

6. The Prosecution's case mainly rests on the testimony of the Victim, who is examined as PW1. Her evidence show that, in the year 2015, she was residing with her mother, siblings and the Appellant. The Appellant was the step father and all of them were residing together at Navnathnagar. Prior to 2014, the Appellant's conduct was proper, however, from 2014, he started keeping an evil eye on her. When her mother used to go out for catering work during marriage season for two to three days, the Appellant used to rape her. When she resisted and told him that it was wrong, he threatened to kill her, her mother and the siblings. Thereafter, the Appellant compelled the Victim to marry his nephew and performed their marriage on 15.05.2015. She stayed at her matrimonial house for two to three days. As her mother was not well, the Appellant brought her back and thereafter again raped her. When she resisted and told him that she was now married, the Appellant again threatened to kill her and assaulted. The said incident of rape took place on 17.07.2015. The Victim informed her mother, who in turn informed her grandmother and maternal aunt. The Victim along with her mother and grandmother went to Mukundwadi Police Station and lodged report below Exh. 37. Her further evidence shows that, her statement was recorded under Section 164 of the Code of Criminal

Procedure. She was referred to Government Hospital and Training Institute [GHATI] for medical examination. Her clothes came to be seized, which she identified during the course of her examination. She identified the Appellant as the Accused.

7. By referring the report to the Victim, it is brought in her cross-examination that, specific date and day in respect of rape is not mentioned in the report. It is not expected from the Victim to give the specific date and day of such incidents. However, in her cross-examination, there is a reiteration of incident of rape dated 17.07.2015. Her cross-examination shows that, in 2015, the Victim was taking education in the High School. Not informing her sister, mother and the grandmother about the incident immediately is quite natural as her evidence shows that, she was threatened to kill and she was residing with the Appellant. Her evidence shows that, whenever he mother was out of the house for work, the Appellant used to rape her. It cannot be said an unnatural conduct, particularly when she was dependent on her parents and the Appellant was the head of the family. Therefore, her immediate non-disclosure of the incident of rape is natural and cannot be the reason to doubt her version. Her evidence shows that, it was consistent with her previous statements. Nothing has come in her cross-examination to show that, her testimony was was an improvement. Her evidence is natural and without any inconsistency. Nothing has come in

her evidence to show that, she had any reason to falsely implicate the Appellant. There is no reason to discard her testimony as it inspires confidence. Thus, her testimony is accepted.

8. The evidence of PW4 – Namdeo Shahadrao Chavan, shows that, he was the Headmaster of Zilla Parishad Primary School at Wasadi, Tq. Kannad. The Victim was the student of that School. She was admitted in the School on 14.06.2004 in the first standard. The necessary entry regarding the Victim, including her date of birth, was made in the school record on the basis of a request application, the printed admission application, and a copy of the vaccination card submitted by her parents. The evidence show that, this witness brought the original record with him and the copies are taken on record. As per the School record, the date of birth of the Victim was 13.08.1997. In the cross, it has come that the birth certificate was not on record and the copy of vaccination card was taken for satisfaction about the date of birth. The evidence of this witness clearly shows that, the date of birth was entered in the school record on the basis of the information provided by the parents of the Victim and the same was entered during the regular functioning of the School. The school record showing the date of birth of the Victim was brought from the proper custody. Merely because this witness was not the Headmaster at the time when the entry was made, can be no reason to discard the evidence in the nature of

school record which was kept in the regular course of functioning of the School. It is clear from his evidence that, the date of birth of the Victim was entered at the relevant time of her school admission. The cross-examination could not create any dent to the testimony of this witness. The prosecution proved the date of birth of the Victim through this evidence.

9. Further, there is a medical evidence on the record in the nature of testimony of the PW3 Medical Officer. Her evidence shows that in the year 2015, she was an Assistant Professor in GHATI. On 19.07.2015, Mukundwadi Police had brought the Victim for medical examination. She took the consent of the Victim and examined her. She recorded the history of sexual assault on the Victim as per her say. She collected the samples. On physical examination of the Victims, she found that, *there were signs suggestive of recent forceful penetration of vagina and sexual intercourse cannot be ruled out*. She gave her opinion. The medical examination papers of the Victim are brought on record. Her evidence further shows that, the blood samples were collected. The report of Chemical Analyzer at Exhs. 55 to 57 were confronted to her and she deposed that, on going through the CA reports, she can say that sexual assault cannot be ruled out. Nothing has come in the cross-examination to create any dent in the medical evidence in respect of the victim, showing recent signs of forceful sexual

intercourse. Even the Victim has deposed of her medical examination by the Doctor. The medical evidence on record corroborate the testimony of the Victim.

10. The evidence in the nature of CA reports shows that, the blood group of the Victim and that of the Appellant was of group 'O'. The medical papers at Exh. 63 shows that, the said document was admitted by defence, which was in respect of the medical examination of the Appellant which indicate that, there was nothing to suggest that the Appellant was not capable of performing sexual intercourse. This document proved that the Appellant was capable of performing sexual intercourse.

11. On the basis of above discussed evidence, the testimony of the Victim gets corroboration from the medical evidence. The history given by the Victim at the time of her medical examination corroborates her testimony. The evidence of Medical Officer supports the version of Victim in respect of rape. From the School record, the Prosecution established the date of birth of the Victim and from the evidence of the Victim, it is clear that, at the time of incident the Victim was a child as defined under Section 2(d) of the POCSO Act, which defines the Child as the person below the age of 18 years. The above discussed evidence available on record is trustworthy and nothing has come in the cross-

examination so as to create any dent in the prosecution's evidence. The evidence of Prosecution inspires confidence. The evidence on record proved the Charge of rape, criminal intimidation, and sexual assault.

12. As regards the framing of additional Charge against the Appellant for the offence punishable under Section 11 of the POCSO Act is concerned, there is no dispute that the Charge for the graver offence was framed at the initial stage before the evidence was led. The additional Charge dated 18.12.2021 shows that it was framed in view of order below Exh. 1, dated 18.12.2021. It is not shown by the Appellant as to what prejudice had caused to him by framing the additional Charge which was for the lesser offence. However, re-appreciation of the evidence available on record do not show essential ingredients for the offence punishable under Section 11 of the POCSO Act. Therefore, framing of additional Charge was not warranted and, therefore, the conviction and sentence under Section 11 of the POCSO is liable to be interfered with.

13. The above discussion shows that, the prosecution has proved the offence punishable under Sections 376(2)(f) and 506 of the IPC and offence punishable under Sections 4 and 6 of the POCSO Act. The commission of the proved offences, was admittedly prior to the amendment of 2019, by which the minimum sentence for the offence

punishable under Section 4 and 6 of the POCSO Act was enhanced. In the said judgment cited by the learned Advocate for the Appellant, the aspect of sentence provided on the date of offence is considered. The relevant paragraphs no. 9, 10, 11 and 12 are reproduced below.

- “9. *This Court, having found no merit in the challenge to conviction, had confined its notice to the question of sentencing. However, we find merit in the appellant’s submission that since the offence was committed on 20.05.2019, the amended provision of Section 6 of the POCSO Act, which came into force on 16.008.219, could not have been applied to this case.*
10. *In this regard, Article 20(1) of the Constitution of India is relevant and reads as under:*

“20. *Protection in respect of conviction for offences -*

(1) *No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”*
11. *The Constitutional bar against retrospective imposition of a harsher penalty under Article 2(1) is clear and absolute. The Trial Court, in applying the enhanced sentence introduced by the 2019 Amendment to Section 6 of the POCSO Act, has effectively subjected the appellant to a punishment greater than that which was permissible under the law in force at the time of commission of the offence which is clearly violative of the bar contained in Article 20(1) of the Constitution of India.*
12. *The sentence of “imprisonment for life, meaning remainder of natural life,” as per the amended provision, did not exist in the statutory framework on 20.05.2019, the date of the incident. Under the unamended Section 6, the maximum punishment permissible was imprisonment for life in its conventional sense and not imprisonment till the remainder of natural life.*
13. *Accordingly, while we uphold the conviction of the appellant under Section 6 of the POCSO Act, we modify the sentence to that of rigorous imprisonment for life, as understood under the unamended statute, and set aside*

the sentence of imprisonment for the remainder of the natural life. The fine of Rs. 10,000/ is maintained.”

14. The evidence on record has proved that, at the time of incident the Victim was above the age of 17 years and below the age of 18 years. At the time of commission of offence, the minimum punishment for the offence punishable under Sections 4 and 6 of the POCSO Act was seven (7) years and ten (10) years respectively. In the Charge and the Statement under Section 313 Cr.PC. of the Appellant, the occupation of the Appellant is shown as labourer. Considering these aspects, in my view, the sentence awarded by the learned Trial Court needs to be modified to bring it in consonance with the punishment provided in the statute at the time of offence. With this discussion, I proceed to pass the following order: -

ORDER

- [i] The Appeal is partly allowed.
- [ii] The conviction of the Appellant for the offence punishable under Sections 376(2)(f), 506 of the IPC and under Sections 4 and 6 of the POCSO Act, is maintained.
- [iii] The sentence awarded by the learned Trial Court for the offence punishable under Sections 376(2)(f) and 506 of the IPC is maintained.
- [iv] The sentence awarded by the learned Trial Court for the offence punishable under Section 4 of the POCSO is modified to seven (7) years instead of ten (10) years, and for the offence punishable under Section 6 of the POCSO

Act, it is modified to ten (10) years instead of twenty (20) years.

- [v] The conviction and sentence for the offence punishable under Section 11 of the POCSO Act is quashed and set aside, and the Appellant is acquitted of Section 11 of the POCSO Act. The fine paid towards the same, if any, be refunded to him.
- [vi] The rest of the operative order of the impugned Judgment and Order shall remain the same.
- [vii] The R&P be sent back to the learned Trial Court.
- [viii] Fees of learned Advocate, Mr. Ravindra B. Narvade Patil, appointed to represent the Appellant, is quantified at Rs. 12,000/- [Rupees Twelve Thousand], which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.
- [ix] Fees of learned Advocate, Mr. Mahendra G. Kochar, appointed to represent Respondent No. 2, is quantified at Rs. 12,000/- [Rupees Twelve Thousand], which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

[NEERAJ P. DHOTE]
JUDGE

SG Punde