



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

CRIMINAL APPEAL NO. 838 OF 2024

Balaji Mahadu Santre
Age : 23 years, Occu. Labour,
R/o. Babhali, Tal. Dharmabad,
Dist. Nanded.

...Appellant

Versus

1. The State of Maharashtra,
Through the Police Station, Dharmabad,
Tal. Dharmabad, Dist. Nanded.

2. XYZ

...Respondents

.....
Mr. Cedric X. Fernandes h/f Mr. Vinod S. Dhotre – Advocate for the
Appellant
Mr. B. A. Shinde – APP for the State
Mr. Amolkumar Wakode – Advocate for Respondent No. 2 / Victim
.....

CORAM : NEERAJ P DHOTE, J.
DATED : 19TH DECEMBER, 2025

ORAL JUDGMENT : -

1. This Criminal Appeal under Section 374(2) of the Code of Criminal Procedure is filed against the Judgment and Order dated 01.03.2024 passed by the learned Special Judge (POCSO), Biloli, in Special Case No. 16/2022, convicting and sentencing the Appellant as follows:-

“ORDER

- The accused No. 1 Balaji Mahadu Santre, is held guilty under Section 235(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Sections 376(2)(i), 376(2)(n) of the Indian Penal Code, 1860 and Sections 4, 6, 8 and 12 of the POCSO Act, 2012.*

2. *Accused Nos. 1 to 5 are hereby acquitted of the offence punishable under sections 9 and 10 of the Prohibition of Child Marriage Act, 2006.*
3. *Accused No.1 is sentenced to undergo Rigorous Imprisonment for the period of 10 (Ten) years and to pay a fine of Rs.10,000/ (Rupees Ten Thousand only) for an offence punishable under Section 6 the Protection of Children from Sexual Offences Act, 2012. In default to pay the amount of fine, he shall suffer rigorous imprisonment for One month.*
4. *No separate sentence is imposed upon him for the offences punishable under Sections 376(2)(i), 376(2)(n) of I.P Code, Sections 4, 8, and 12 of the Protection of Children from Sexual Offences Act, 2012.*
5. *Accused No.1 is in custody from 24.04.2022. He is entitled for set off under section 428 of Cr.PCode.*
6. *Accused Nos. 2 to 5 are called upon to furnish PB and SB of Rs. 15,000/ each under Section 437A of Code of Criminal Procedure.*
7. *The accused is apprised of his right to file an appeal against the judgment of conviction and sentence before the Hon'ble High Court under Section 374(2) of the Code of the Criminal Procedure, 1973 within 30 days from the date of the sentence as provided under Article 115(a) of the Limitation Act, 1963.*
8. *A certified copy of the judgment be supplied to the accused No.1 free of cost as provided under Section 363(4) of the Code of Criminal Procedure, 1973. 9. A copy of the judgment be sent to the learned District Magistrate, Nanded, under Section 365 of the Code of Criminal Procedure.*
10. *A copy of judgment be sent to the Secretary, District Legal Services Authority, Nanded for considering the case of victim for grant of compensation under section 357A of Cr.PCode.*

(Dictated and pronounced in open court)”

2. The Prosecution's case, in brief, as revealed from the Police Report is that, the Victim was forced to marry with the Appellant by her mother and her other relatives on 16.03.2022. After the marriage, the Appellant committed sexual intercourse with the Victim against her wish. Thereafter, she left the house of the Appellant and came to her mother's house. The Mother told her that, the Appellant was her husband, she should allow him to have sexual intercourse with her. As the Victim was driven out of the house by her Mother, she lodged the Report with the Dharmabad Police Station, District Nanded and Crime bearing No. 111 of 2022 came to be registered against the Appellant and acquitted co-accused, who were the Mother, Brother, Sister-in-law of the Appellant and the Mother of the Victim. The Victim was referred for medical examination. The statement of the witnesses were recorded. On completion of the investigation, the Charge-sheet came to be filed against the Appellant and the acquitted co-accused.

3. On committal, the learned Trial Court framed the Charge for the offences punishable under Sections 376(2)(i) and 376(2)(n) of the Indian Penal Code [for short 'IPC'], for the offences punishable under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act [for short 'POCSO Act'], against the Appellant and for the offences punishable under Sections 9 and 10 of the Prohibition of Child Marriage Act [hereinafter referred to as 'Child Marriage Act'], against

the acquitted Co-accused Nos. 2 to 5. The Appellant and the acquitted Co-accused denied the Charge and claimed to be tried. To prove the Charge, the Prosecution examined in all following five (5) witnesses.

- i] The Victim, as PW1.
- ii] The Medical Officer, as PW2.
- iii] The Villager, as PW3.
- iv] The Headmaster of the School where the Victim studied, as PW4.
- v] The Investigating Officer, as PW5.

4. The relevant documents such as Report / FIR, Spot *Panchanama*, Medical examination papers and the copy of School extract, etc., came to be brought on record in the evidence of the aforesaid witnesses.

5. After the Prosecution closed its evidence, the learned Trial Court recorded the statement of the Appellant and the acquitted co-accused under Section 313(1)(b) of the Code of Criminal Procedure. After appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Award acquitting the Accused Nos. 2 to 5 and convicting the Appellant as above.

6. Heard the learned Advocate for the Appellant, learned APP for the State and the learned Advocate for the Respondent No. 2 /

Victim. Scrutinised the evidence on record.

7. It is submitted by the learned Advocate for the Appellant that, the Prosecution failed to prove that the Victim was a Child at the relevant time. The Victim's evidence show that, she was married to the Appellant, therefore, the evidence in respect of sexual intercourse will not be incriminating in nature. The evidence on record goes to show that, the history was narrated to the Medical Officer by the Woman Constable and not by the Victim. Unless the Prosecution establishes their own case, the presumption under Section 29 of the POCSO Act will not come into play. The learned Trial Court has not properly appreciated the evidence on record and convicted the Appellant. In support of his submissions, he cited the judgments in *D. Bakkiyaraj Versus The Inspector of Police, Attur Police Station, Salem District, Crl.A.No. 171 of 2022, decided on 14.10.2025* AND *P. Yuvaprakash Versus State Rep. By Inspector of Police, Criminal Appeal No(s). 1898 of 2023, decided on 18.07.2023.*

8. It is submitted by the learned APP that, the Victim deposed of her date of birth before the learned Trial Court and the Appellant in his statement under Section 313 of the Cr.P.C., accepted the said evidence. To prove the age of the Victim, the Headmaster of the School, where the Victim was studying, has been examined. The evidence on

record established that, the Victim was the Child at the relevant time. The presumption under Section 29 of the POCSO Act will come into play and the Appellant has not examined any defence witness to prove the contrary. The learned Trial Court has rightly convicted and sentenced the Appellant and no interference is called for and hence, the Appeal be dismissed.

9. It is submitted by the learned Advocate for the Respondent No. 2 / Victim that, as the Prosecution established that, the Victim was the Child, there was sufficient evidence on record to prove the Charge against the Appellant and the learned Trial Court has rightly convicted and sentenced the Appellant and the Appeal be dismissed.

10. When the Prosecution and the Charge is for the offence punishable under the provisions of POCSO, it is necessary to establish that the Victim was the Child at the relevant time, as defined under Section 2(d) of the POCSO Act, which reads as under: -

2(d) "child" means any person below the age of eighteen year.

11. In the above referred Judgments relied upon by the learned Advocate for the Appellant, it is reiterated that, for proving the age of the Victim, the provisions of Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015, are required to be considered,

which provides that, the documents for proving the age, such as, i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; (ii) the birth certificate given by a corporation or a municipal authority or a panchayat; (iii) and only in the absence of above two, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

12. In the case at hand, the Prosecution is relying on the testimony of the Victim and the School record to show that, the Victim was a Child. Though the Victim has deposed her date of birth in her substantive evidence, it would be hearsay in nature and therefore not admissible. Consequently, replying in the affirmative the question no. 5 by the Appellant in respect of the date of birth deposed by the victim becomes inconsequential and cannot form the basis to establish the Victim's date of birth.

13. The other evidence on the aspect of age is that of PW4, who was the Headmaster of Nutan Vidyalaya High School, Umri, Dist. Nanded. He appeared in response to the summons and came with the Admission Register. His evidence show that, the date of birth of the Victim was recorded as 19.04.2009 in the school record. The copy of

the extract from the Admission Register is brought on record at Exh. P-112. The cross-examination of this witness completely demolishes the authenticity/credibility of the date of birth mentioned in the said Admission Register. His evidence show that, the Victim was admitted in the 6th Std., on 17.02.2021. His evidence in the cross-examination show that, he was working as the Headmaster in the said school from 01.07.2019. This show that, prior to the admission of Victim in his School, he was the Headmaster. The said document did not bear his signature. The said document also did not bear the seal of the school. The Application for the Admission was not accompanied with the birth certificate. His evidence show that, the copy of the school leaving certificate of the Zilla Parishad Kanya Shaha, Umri, was enclosed with the Application and the date of birth mentioned in the said School Leaving Certificate was entered in the school record.

14. Undisputedly, the Prosecution has not examined the witness from the Primary School where the Victim had initially taken admission and where her date of birth was entered for the first time. There is no evidence as to on what basis the date of birth of the Victim was entered in her primary school recorded which she first attended. The evidence of this witness further shows that he did not call the original papers from the Zilla Parishad School, Umri. He admits that, Exh. P-112 was not in his handwriting and the last two columns of the said documents

were blank. He was confronted with the Register and it is brought in the evidence that, it does not bear the signature or the stamp in the last two columns. He further deposed that he was not aware on whose request the transfer certificate was issued to the students from his school. This evidence on record is not at all sufficient to prove the date of birth and the age of the Victim. This evidence of the Headmaster cannot form the basis to establish the same, as source of the date of birth entered in the school register is not brought on record. The Prosecution has miserably failed to prove the date of birth and the age of the Victim and consequently failed to prove that the Victim was the Child.

15. Coming to the testimony of the Victim, in clear terms, she deposed that, on 16.03.2022, the acquitted Accused Nos. 3 and 4 had come to her mother at the Brick Kiln and proposed marriage of the Appellant with her and accordingly, on 16.03.2022, her marriage was performed with the Appellant at Village Babhali in front of house of Accused No. 1. Her further evidence show that, after the marriage, sexual intercourse was done by the Appellant with her. She deposed that, it was without her wish. Her evidence further show that, the acquitted accused Nos. 2 to 4 were residing with them. Her further evidence show that, she had love affair with one person and was intending to perform the marriage with that person, however, her

mother told her to perform the marriage with the person from their own community. This indicate that the Victim was not happy with the marriage with the Appellant. Under such circumstances, her testimony that the Appellant had the sexual intercourse with her against her wish is required to be seen with doubt. In view of the evidence of the Victim in respect of intercourse, the medical evidence showing old healed hymen tear will not be incriminating. Her evidence shows that, her statement was recorded as per the say of the Police. Her further evidence show that, she had no discussion with the Medical Officer and the Woman Police had discussed with the Medical Officer.

16. The other evidence is that of Panch witness, who did not support the prosecution, and the evidence of the Investigating Officer who deposed about the investigation done by him.

17. The above discussed evidence on record is far from establishing that the Victim was the Child. The suggestions are given in the Cross-examination that the Victim was more than 18 years of age at the time of the incident. There is no dispute that the Appellant was aged about 21 years at the relevant time. The evidence of the Victim in respect of the Sexual intercourse by the Appellant will not help the Prosecution to prove the Charge as the Victim was the wife of the Appellant as per the evidence of the Victim herself. The Co-accused are

acquitted of the Charge for the offence punishable under the Section of the Child Marriage Act. When the Prosecution could not establish the basic ingredients for the offence for which the Appellant was charged, the presumption under Section 29 of the POCSO Act will not come into play. On re-appreciation of the evidence available on record, the only finding which could be recorded is that, the Prosecution failed to prove the Charge against the Appellant and he is entitled for acquittal. Hence, I proceed to pass the following order: -

ORDER

- [i] The Appeal is allowed.
- [ii] The impugned Judgment and Order dated 01.03.2024 passed by the learned Special Judge (POCSO), Biloli, in Special Case No. 16/2022, convicting and sentencing the Appellant, is quashed and set aside.
- [iii] The Appellant is acquitted of the offences punishable under Sections 376(2)(i), 376(2)(n) of the IPC and Sections 4, 6, 8 and 12 of the POCSO Act.
- [iv] The Appellant is behind the bars. He be released forthwith, if not required in any other case.
- [v] The fine amount if paid by the Appellant, be refunded to him.

[vi] The *muddemal* articles be dealt with as per the operative order of the learned Trial Court.

[vii] Appeal stands disposed off.

[NEERAJ P. DHOTE]
JUDGE

SG Punde