



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

CRIMINAL APPEAL NO.548 OF 2017

Shaikh Akhlakh Shaikh Latif,
Age : 21 years, Occu : Auto Driver,
R/o. Mohammad Nagar, Bhokar,
Tq. Bhokar, Dist. Nanded

.. Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra,
Through Police Station Bhokar,
Tq. Bhokar, Dist. Nanded
2. XYZ
through Real Father
Bhagwan Pimple,
Age : 60 years, Occu : Agri,
R/o. Ekamba, Tq. Umarkhed, Dist. Yeotmal

.. Respondents
(Resp.No.2 is Orig. Complainant)

.....
AND

CRIMINAL APPEAL NO.679 OF 2020

Pandurang S/o. Punjabrao Pilewar,
Age : 22 Years, Occu : Lbaour,
R/o. Khaja Nagar, Near Shani Mandir, Bhokar, Tq. Bhokar,
Dist. Nanded
At present Central Prison,
Harsool, Aurangabad

... Appellant
(Orig. Accused No.2)

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Police Station Bhokar,
Tq. Bhokar, Dist. Nanded (Orig. Complainant)
2. XYZ
through Real Father Bhagwan Pimpale,
Age : 60 years, Occu : Agril,
R/o. Ekamba, Tq. Umarkhed, Dist. Yeotmal ... Respondents

AND**CRIMINAL APPEAL NO.411 OF 2021**

Parmeshwar S/o. Madhav Suryawanshi
 Age : 22 years, Occu : Auto Driver,
 R/o. Guntur, Tq. Kandhar, Dist. Nanded
 at Present Central Prison,
 Harsool, Aurangabad

... Appellant
 (Orig. Accused No.3)

Versus

1. The State of Maharashtra
 Through the Police Station Officer,
 Police Station Bhokar,
 Tq. Bhokar, Dist. Nanded (Orig. Complainant)
2. XYZ
 C/o. Bhagwan Pimpale,
 Age : 60 years, Occu : Agriculture,
 R/o. Ekamba, Tq. Umarkhed, Dist. Yavatmal. ... Respondents

....

Shri. Govind G. Suryawanshi, Advocate for the Appellant in Criminal
 Appeal No.548/2017

Shri. H. P. Kshirsagar, Advocate for the Appellant in Criminal Appeal
 No.411/2021

Ms. Anagha N. Pedgaonkar, Advocate for the Appellant (Appointed) in
 Criminal Appeal No.679/2020

Shri. N. D. Batule, APP for the Respondent – State in all the matters

Shri. Suniket A. Kulkarni, Advocate for the Respondent No.2
 (appointed) in all the matters.

.....

CORAM : NEERAJ P DHOTE, J.

RESERVED ON : 29.09.2025

PRONOUNCED ON : 07.11.2025

COMMON JUDGMENT :

1. These are the Appeals against the Conviction under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') against the Judgment and Order dated 01.07.2017

passed by the learned Additional Sessions Judge, Bhokar, Dist. Nanded in the Spl. POCSO No.06/2015 convicting and sentencing the Appellants as follows:

“1- Accused 1) Shaikh Akhlakh Shaikh Latif, 2) Pandurang Punjabrao Pilewar & 3) Parmeshwar Madhav Suryawanshi are hereby convicted u/sec. 235(2) of Cr.P.C. for the offence punishable u/sec. 376(2)(i) & 376(D) of I.P.C. and Sec. 5(g) punishable u/sec. 6 of the POCSO Act and they are sentenced in graver offence i.e. under sec. 376(D) of I.P.C. to suffer 20 years Rigorous Imprisonment each and fine of Rs. 2,000/- (Rs. Two thousand only) each, in default of fine they shall further undergo simple imprisonment of 02 (two) months each.

2- Accused 1) Shaikh Akhlakh Shaikh Latif, 2) Pandurang Punjabrao Pilewar, & 3) Parmeshwar Madhav Suryawanshi are hereby acquitted u/sec. 235(1) of Cr.P.C. for commission offence u/sec. 366 & 506 of I.P.C. and u/sec. 3(i)(xi),(xii) & 3(2)(v) of SC & ST (Prevention of Atrocities) Act, 1989.

3- Muddemal property except cash amount of Rs. 640/- and Ape auto bearing registration No. MH-26-AC-3511 being worthless be destroyed after appeal period is over after giving intimation to the Registry of Hon'ble High Court, Bombay, Bench at Aurangabad.

4- Muddemal property currency notes of Rs. 640/- which were seized from the victim, be returned to the victim after appeal period is over after giving intimation to the Registry of Hon'ble High Court, Bombay, Bench at Aurangabad.

5- Ape auto having registration No. MH-26-AC-3511 which is already given to the owner on indemnity bond be retained with the owner and owner Harshvardhan Mukundrao Dhotre, r/o. Praful Nagar, Bhokar is hereby directed not to sell or transfer the vehicle till the appeal period is over.

6- Accused are entitled to get set-off u/sec. 428 of Cr.P.C. for the period they have undergone in jail in this crime.

7- The matter be referred to District Legal Services Authority for determining the victim compensation under sec. 357-A of Cr.P.C. by making appropriate inquiry for rehabilitation of the victim.

8- Certified copy of the judgment be given to the accused No. 1 to 3, free of costs.

9- Copy of this order be given to the Dist. Magistrate as per compliance u/sec. 365 of Cr.P.C.

10- Judgment is directly dictated on computer and pronounced in open Court.”

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

2.1. The minor Victim aged 14 (fourteen) years and studying in the 6th Std was residing with her Father, Step Mother and siblings in the village Ekamba, Tq. Umarkhed, Dist. Yeotmal. She was not treated properly by her Step Mother and Father. She was fed up of the treatment meted out to her by her parents. On 17.09.2015 around 11:00 a.m. she left home and by hiring an auto rickshaw came to the railway station at Islapur. In the evening she boarded Nandigram Express and reached Mudkhed Railway Station. One boy named Karan took her to his house, where she stayed for one night with the Grandmother of the said Karan. In the evening of next day i.e. 18.09.2015, Karan brought her to the Bhokar Railway Station and asked her to return home and he left. The Victim got acquainted with one woman at Bhokar Railway Station, to whom the Victim shared the events. One boy was sitting next to the said woman. After some time the woman left. Thereafter, the said boy asked her whether she was alone and whether she had her meals and asked her name and the place of residence. The said boy introduced himself as the Appellant - Shaikh Akhlakh. He told her that, he was knowing the boys namely Nikhil Gaikwad and Maharaj from her village. The Victim felt that he was a good person. The Appellant - Shaikh Akhlakh brought her out of the station near one auto rickshaw and she was asked to board the auto rickshaw. The other two (2) Appellants were present

there. The Auto rickshaw was taken near one hotel. He brought tea and biscuits and gave to the Victim. Thereafter the Victim was taken to one agricultural field. The Victim was gang rapped by the Appellants. Thereafter the Appellants gave her some money. Thereafter they made the Victim to sit in the auto rickshaw and dropped her near Ganesh Temple at village Palaj. One woman saw the Victim weeping. The Victim told the woman about the incident. In the said village orchestra was going on and the Police were present there. The Victim approached the Police and narrated the incident. The Police took the Victim to the Bhokar Police Station, recorded her Statement and registered the Crime bearing No.139/2015 for the offence punishable under Sections 376(2)(i), 376(D), 506 of the Indian Penal Code (for short, 'I.P.C.'), Sections 3(a), 4, 5(g), 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO'), and Sections 3(i)(xi)(xii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC & ST Act') against the Appellants.

2.2. During the course of the investigation, the Victim was sent for medical examination, the Clothes of the Victim came to be seized, the Victim took the Police to the Spot of incident where the Spot Panchanama was drawn, the Appellant - Shaikh Akhlakh came to be arrested and his clothes came to be seized, the Statement of Witnesses

were recorded, the other two (2) Appellants came to be arrested and their clothes came to be seized, the seized articles were sent for chemical analysis, the necessary documents came to be collected, the Statement of the Victim came to be recorded before the learned Magistrate and on completion of the investigation, the Appellants came to be Charge-sheeted.

2.3. On committal, the learned Trial Court framed the Charge against the Appellants below Exh.10 for the offence punishable under Sections 376 (2)(I), 376(D), and 506 r.w.s. 34 of I.P.C., and Sec.3 punishable under Section 4, Sec.5 punishable under Section 6 of the POCSO, and Sections 3 (1)(xi)(xii), 3(5) of the SC & ST Act, to which they pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all 9 (nine) Witnesses. The villagers, who saw the Victim weeping on 18.09.2015, were examined as PW1 – Ganesh Poshetty Gangamwad and PW2 – Gangadhar Bakanna Chatlawad. The Victim came to be examined as PW3. The Pancha - Lingam Narasayya Artewad for the Spot and the Seizure of the clothes of the Appellant - Shaikh Akhlakh came to be examined as PW4. The Panch - Abdul Latif Abdul Majid for Seizure of the Victim's clothes came to be examined as PW5. The Panch - Sunil Pandurang Shivewar for the Test Identification Parade (for short, 'TIP') came to be examined as PW6. The Panch - Yashwant Venkatrao Gayangi for seizure of clothes of the Appellant – Suryawanshi

came to be examined as PW7. The Medical Officer – Dr. Vinod Vasant Rathod who examined the Victim on 19.09.2015 came to be examined as PW8. The Investigating Officer – Yogeshkumar Sohanlal Gupta came to be examined as PW9. The FIR / Report, the Panchanamas, the Reports from the Chemical Analyzer and other relevant documents came to be exhibited in the evidence of the said witnesses. After the Prosecution filed the evidence closed *pursis*, the Statement of the Appellants came to be recorded under Section 313 (1)(b) of the Cr.P.C. According to the Appellant - Shaikh Akhlakh there was dispute in respect of land between his Father and the Father of the Victim and therefore, he was falsely implicated. According to the other two Appellants, they were falsely implicated. Thereafter, the learned Trial Court passed the impugned Judgment and Order.

3. It is submitted by the learned Advocate for the Appellant – Shaikh Akhlakh that, the testimony of the Victim is not corroborated by the medical evidence. The Appellant – Sk. Akhlakh was shown to the Victim in the Police Station before the TIP was conducted. The Witnesses, who met the Victim at the railway station, were not examined. The C.A. Reports do not support the case of the Prosecution. Since the Prosecution's case is not proved, the Appeal be allowed. In support of his submissions, he cited the Judgments which would be considered in the later part of the Judgment.

4. It is submitted by the learned Advocate for the Appellant – Pandurang that, no description of the unknown Accused persons was given. The Appellant – Pandurang was not known to the Victim. Only on the basis of the identification in the TIP, the Appellant – Pandurang came to be Charge-sheeted. The corroborative evidence brought on record by the Prosecution do not support the testimony of the Victim. There were no injuries on the person of the Victim. The age of the Victim was not proved as required under the law. On the basis of the evidence available on record, the conviction is unsustainable and the Appeal be allowed.

5. It is submitted by the learned Advocate for the Appellant – Parmeshwar that, though Victim deposed that, she was taken in the auto rickshaw, she did not raise any alarm. When the auto rickshaw was stopped at one garage for repairing the headlight as deposed by the Victim, the Victim did not raise any alarm even at that point of time. The mobile phones of the Appellants and the CCTV footages were not seized. The age of the Victim was not proved. The C.A. Reports show nothing. The investigation was not done properly and the benefit should go to the Appellant. The learned Trial Court failed to appreciate the evidence in right perspective and therefore, the Appeal be allowed.

6. It is submitted by the learned APP for the State that, though

PW1 and PW2 do not support the case of the Prosecution, some part of their evidence benefits the Prosecution. The evidence show that, the Victim was found crying before she was handed over to the Police. The Victim identified the Appellants in the TIP and also before the learned Trial Court as the Accused persons. The Spot Panchanama corroborate the testimony of the Victim. The other evidence in the nature of the seizure of the clothes support the case of the Prosecution. Presumption under Section 114A of the Indian Evidence Act comes into play. Except denial, no explanation is given by the Appellants in the Statement under Section 313 of the Cr.P.C. Nothing has come on record to show that the Victim had the reason to falsely implicate the Appellants. The learned Trial Court has rightly convicted the Appellants and the Appeals be dismissed. In support of his submissions, he cited the Judgment which would be considered in the later part of the Judgment.

7. The learned Advocate for the Victim adopted the submissions advanced by the learned APP.

8. The Appellants are convicted for the offence punishable under the I.P.C. and POCSO. For conviction under POCSO, the Victim has to be a child as defined under Section 2(d) of POCSO which provides that, *“child” means any person below the age of eighteen years*. In the case at hand, the Prosecution relied on the extract of admission register of

the school at Exh.85. Undisputedly, the Headmaster or the concerned person from the school was not examined by the Prosecution. The said extract is brought on record in the evidence of PW9 – Investigating Officer. It is needless to state that, the Investigating Officer is not the author of Exh.85. Noting in paragraph-11 of the evidence of PW9 – Investigating Officer show that, it was exhibited as no objection was given by the defence. It is clear from the said endorsement that no objection was for exhibiting the said document. There is nothing to show that the defence admitted the contents of the said document. Mere exhibiting will not suffice. The age or date of birth of the Victim was fact in issue. The age of the Victim is required to be proved by legally admissible document.

9. In *Alamelu and another v. State*, AIR 2011 SC 715, relied by learned Advocate for the Appellants which was the Criminal Appeal against the Conviction and Sentence for the offence of Rape and Kidnapping, one of the point for consideration was the age of the Prosecutrix therein. In the said case, the High Court based its conclusion in respect of age of Prosecutrix on the transfer certificate (Ex.P16) and Certificate issued by the Radiologist (Exh.P4 and P5). It is observed that, *‘the admissibility of the document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth*

mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.' The observations in the *Birad Mal Singhvi v. Anand Purohit*, AIR 1988 SC 1796 are quoted wherein it is observed that '*Merely because the documents Exs. 8, 9, 10, 11 and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of HukmiChand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents.'* Further, the observations in *Narbada Devi Gupta v. Birendra Kumar Jaiswal and another*, AIR 2004 SC 175 are quoted wherein it is observed that, '*The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'.*

10. Except the above Exh.85, there is no evidence adduced by the Prosecution to prove the date of birth or the age of the Victim. In view of the above referred settled legal position, Exh.85 which is the extract

of admission register will not be of any assistance to the Prosecution to prove that, the Victim was a child as defined under the above referred provision of the POCSO, as it is not duly proved. The Prosecution failed to prove that, the Victim was a Child.

11. The Prosecution's case largely depends on the testimony of the Victim who is examined as PW3. Her testimony show that, she was residing with her Father, Step Mother and siblings. She left her home due to the harassment by her parents and she travelled alone in the railway from one place to another. Her evidence also show that, she had love affair and physical relations with one person by name Umesh, whose field was near the field of her family. Her testimony show that, out of frustration and anger she left home on her own accord. From this, it can reasonably be concluded that the Victim was not a shy person and was a courageous woman. According to the Victim, the Appellant - Shaikh Akhlakh met her at railway station who took her out of the railway station near the auto rickshaw wherein other two Appellants were present and she was provided tea and biscuits. The other two Appellants joined the Appellant - Akhlakh and all the Appellants took her to hotel. Her evidence show that, she was told not to fear and the auto rickshaw was taken to Bhokar town. The Appellants decided to consume liquor and took the auto to the village Palaj. While travelling towards Palaj, the headlight of the auto rickshaw went off. The

Appellant – Shaikh Akhlakh pulled her and took her to a cotton field where the other Appellants also came. They told her that, they were giving money and food and would not leave her without taking advantage. All the Appellants took off her clothes and all the Appellants raped her forcefully. The Appellant - Shaikh Akhlakh put knife on her neck and threatened her not to disclose the incident to the police or she would be killed. After the Rape, they asked her to wear the clothes and they dropped her at Palaj village where the orchestra was going on. The Appellants gave her 4 notes of Rs.100/- denominations and 24 notes of Rs.10/- denominations. As she was crying, one lady came near her, to whom she narrated the incident. The lady asked her to inform the Police. There were policemen near the orchestra and the Victim went to them and narrated the incident. In the next day morning i.e. 19.09.2015, the policemen brought the Victim to the Bhokar Police Station and recorded her Statement at Exh.50.

12. The cross-examination of the Victim show that, she did not try to flee while she was being taken towards the village Palaj in the auto rickshaw. In so many words, it has come in the cross-examination that, at the time of sexual assault she did not scream, though she volunteered that the Accused threatened her. It has further come in her cross-examination that, she did not scream for help while the Appellants were taking her around in the auto rickshaw at Bhokar. These aspects in the evidence of the Victim cannot be lightly overlooked, particularly in

view of the above observations that the Victim was not a shy person and reasonably courageous woman. Her testimony in respect of forceful Rape by the three Appellants do not find corroboration by the medical evidence of PW8, who was the Medical Officer in the Government Hospital, Nanded, and who medically examined the Victim on 19.09.2015 at 11 a.m. which was the next day morning after the incident. The medical evidence show that the Victim was conscious oriented, the blood pressure and pulse etc. were normal, there were no signs of intoxication, drugs or intake of alcohol. There were dried white stains on the clothes of the Victim. The medical examination found no injuries on the body of the Victim. Local examination of genitals were normal. As regards the injury to the hymen it was found to be old healed tears at 11, 1 & 9 O'clock position. In view of the Victim's evidence in respect of physical relations with the person with whom she was involved, the hymen injury cannot be sufficient or significant to prove the Charge. The cross-examination of this Medical Officer show that, the secondary sexual characters of the Victim were well developed. Nothing was found in the finger nails visible to necked eyes. No injuries were found on any other part including sexual organs. In clear terms it has further come in the cross-examination that there was no evidence of non penetrative injuries and there were no external injuries on genitals and there were no injuries found suggesting force or restrain. It has come in the cross-examination of the Medical Officer that, no treatment

was provided to the Victim. The above discussed medical evidence is far from corroborating the testimony of the Victim.

13. The evidence of PW8 - Medical Officer show that, the sample of blood, vagina swab, pubic hair and clothes of the Victim were sent for chemical analysis. The evidence of PW9- Investigating Officer show that, the clothes of the Appellants were seized after the arrest. His further evidence show that, the seized articles were sent for chemical analysis *vide* letter at Exh.88. The Reports of the Chemical Analyzer which are admissible in evidence pursuant to Section 293 of the Cr.P.C. are at Exhs.95 to 99. The C.A. Report at Exh.95 is in respect of pubic hairs (Exh.2) and vaginal swab (Exh.3) of the Victim and the result of analysis show that, no semen was detected on the same. The C.A. Report at Exh.96 is in respect of nails and pubic hair of the Appellant – Parmeshwar Suryawanshi which show that, neither blood nor any tissue matter was detected in the nails (Exh.3) and neither semen nor vaginal fluid was detected on the pubic hair (Exh.4). The Report at Ex.97 is in respect of pubic hairs and nail clipping of the Appellant – Pandurang Pilewar which show neither blood nor tissue matter was detected in the nail clipping (Exh.5) and neither semen nor vaginal fluid was detected on the pubic hairs (Exh.3). The C.A. Report at Exh.98 is in respect of pubic hair and nail clipping of the Appellant – Akhlakh Shaikh which show that, neither blood nor any tissue matter was detected in the nail

clipping (Exh.5) and neither semen nor vaginal fluid was detected on the pubic hair (Exh.3). The C.A. Report at Exh.99 is in respect of the clothes of the Victim and the clothes of the Appellants and the result of analysis show that, no semen was detected on any of the clothes. The said Report indicate that on the Top (Exh.3) and Salwar (Exh.4) the human blood was found, however the ABO grouping is inconclusive. Therefore, it is clear that the Reports of the Chemical Analysis also do not corroborate the testimony of the Victim in respect of the forceful Rape. There is no evidence and it is nobodies' case that after the incident the Victim took bath and changed the clothes. Whereas the evidence of the Investigating Officer show that, from the time the Victim came to the Police Station till her medical examination she was at the Police Station. The evidence of the Victim also show that, from the village where the Orchestra was going on she informed the police who took her to the Police Station. Under such circumstances, no injury on any part of the body of the Victim and negative C.A. Reports lends the Victim's testimony under the could of doubt.

14. It is true that the testimony of the Victim can form the basis to prove the offence of Rape, however to base the conviction on the sole testimony of the Victim, the evidence of the Victim should be so concrete that, it should give the required assurance in respect of her version. As the Victim was found to be of sufficient understanding and courageous

enough and the medical evidence and the Reports of the Chemical Analyzers not corroborating her version of forceful Rape by three persons, it is not possible to accept the testimony of the Victim. The above discussed evidence do not prove the sexual intercourse by the Appellants. Thus, the presumption under Section 114A of the Indian Evidence Act will not come into play. Therefore, the reliance by the learned APP on *Mohd. Iqbal and another vs. State of Jharkhand (2013) 14 SCC 481* will be of no assistance for the Prosecution as the case in hand differs on factual aspects.

15. The other aspects of the matter are that, the evidence of the Victim show that the Appellants were not known to her. There is no evidence to show that, in her Report the Victim had given the description of the Accused persons. The testimony of the Victim show that, the Appellant – Sk. Akhlakh was shown to her in the Police Station before the TIP was conducted. True it is, the evidence on record go to show that, during the course of the investigation, the Investigating Officer conducted the TIP in which the Victim identified all the Appellants and she further identified the Appellants before the learned Trial Court. There can be no dispute in respect of principles relating to the TIP in *Mulla and Another vs. State of Uttar Pradesh, (2010) 3 SCC 508* relied by the learned APP. When the evidence in respect of forceful gang rape on the Victim is found to be doubtful, the identification

becomes inconsequential. Further, the evidence of the Victim indicate that, her evidence that the Accused told her that they will not leave without taking advantage, that all the Accused removed her clothes and the Accused - Akhlakh put knife on her neck and threatened her, were omissions / improvements. The Prosecution has not examined the Policeman who scribed the FIR and therefore, the defence lost the opportunity to prove the said omissions / improvements, as required under the law. Further, the evidence in respect of seizure of one Chappal from the spot shown by the Victim to the Police will take the case of Prosecution no further in absence of evidence to connect the said seizure with the Appellants. The C. A. Report at Exh.99/A show that, the Earth (Exh.1) and Earth from Exh.6 i.e. full pant of the Appellant – Shaikh Akhlakh tallied in respect of physicochemical characteristics and hue. This will at the most create a slight suspicion and nothing more. The Prosecution did not examine the person named Karan, who took the Victim to his house where she spent one night and who dropped her to the Mudkhed Railway Station on the next day. Further, the Prosecution did not examine the woman, who met the Victim at the railway station. The other evidence of PW1 and PW2, who saw the Victim crying at 11:30 a.m. on 18.09.2015 takes the case of Prosecution no further.

16. As discussed above, in the light of the evidence of the Victim, the corroboration to her testimony is necessary. Without

corroboration, it is not possible to confirm the conviction and punishment awarded by the learned Trial Court. In his Statement under Section 313 of the Cr.P.C., it is stated by the Appellant - Shaikh Akhlakh that, he was falsely implicated due to the land dispute between his Father and the Father of the Victim. In her cross-examination, the witness (Victim) volunteered that her Father and the relative of the Accused asked her to name only Accused No.1 – Akhlakh. It lends support to the defence of false implication. The evaluation of the evidence available on record leads to the conclusion that, the Prosecution failed to prove the Charge against the Appellants. Thus, the impugned Judgment and order convicting and sentencing the Appellants requires interference. Hence, the following order.

ORDER

- (i) The Criminal Appeal Nos. 548 of 2017, 411 of 2021 and 679 of 2020 are allowed.
- (ii) The Conviction and Sentence imposed on the Appellants, namely, Shaikh Akhlakh Shaikh Latif, Parmeshwar S/o. Madhav Suryawanshi, and Pandurang Punjabrao Pilewar by the impugned Judgment and Order is quashed and set aside.
- (iii) The Appellants are acquitted for the offence punishable under Sections 376(2)(i) & 376-D of the I.P.C. and Sec. 5(g) punishable u/sec. 6 of the POCSO Act.
- (iv) The Appellants are behind the bars and they be released forthwith, if not required in any other offence.
- (v) Muddemal Articles be dealt with as per the impugned operative Order of the Trial Court.

- (vi) Record and Proceedings be sent back to the learned Trial Court.
- (vii) The fees of the learned Advocates appointed through legal aid is quantified at Rs.10,000/- (Rs. Ten Thousand) each, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

(NEERAJ P. DHOTE)
JUDGE

GGP